

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	Docket No.
Application for Certification For)	08-AFC-5
The Imperial Valley Solar Project)	
(formerly known as SES Solar Two)	
Project))	
IMPERIAL VALLEY SOLAR, LLC)	
)	
)	

SAN DIEGO GAS & ELECTRIC RENEWABLE ENERGY RESOURCE CENTER
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MONDAY, MAY 24, 2010

10:00 A.M.

Reported by:
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COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Commissioner

Anthony Eggert, Commissioner

HEARING OFFICER AND ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Kristy Chew, Advisor

STAFF AND CONSULTANTS PRESENT

Caryn J. Holmes, Staff Counsel

Christopher Meyer, Project Manager

PUBLIC ADVISOR'S OFFICE

Jennifer Jennings

STAFF WITNESSES

None

APPLICANT

Allan J. Thompson, Esq.

Ell Foley Gannon

Marc C. VanPatten

APPLICANT WITNESSES

Tariq Hussain

Tricia Winterbauer

Patrick Mock

Michael Wood

Matthew Moore

Robert K. Scott

APPLICANT WITNESSES

James Minnick

Carolyn Dunmire

Rebecca Apple

Marc VanPatten

INTERVENOR CURE

Loulana A. Miles, Esq., Adams Broadwell Joseph & Cardozo

INTERVENOR CURE WITNESSES

Scott Cashen

Dr. Christopher Bowles

Christopher Campbell

INTERVENOR BUDLONG

Tom Budlong

Larry Silver, Esq., California Environmental project

INTERVENOR BUDLONG WITNESSES

Edith Harmon

Tom Budlong

INTERVENOR CALIFORNIA NATIVE PLANT SOCIETY

Tom Beltran

ALSO PRESENT

Bob Therkelsen, Energy & Environmental Consulting

PRESENT BY PHONE

Chris Campbell

Chris Bowles

Tariq Hussain

Tricia Winterbauer

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P R O C E E D I N G S

10:00 A.M.

COMMISSIONER BYRON: Good morning again, everyone,
and welcome back to evidentiary hearing for the Imperial
Valley Solar Project.

I'm Commissioner Jeff Byron, California Energy
Commission, Presiding Member of this Committee.

With me is my Associate Member, Commissioner
Anthony Eggert, our Hearing Officer, Raoul Renaud. And to
my left is my Advisor, Kristy Chew.

I think most of you were all here yesterday. And
we don't know that, for those who are on the phone, so I'm
going to ask that we do quick introductions, again, so those
on the phone will know everyone that's here in the room.

I think it's also helpful to our court reporter to
do that, as well.

So, I'm going to turn it over to our Hearing
Officer and he's going to conduct our second day in the most
expeditious way possible, I'm sure.

Mr. Renaud.

HEARING OFFICER RENAUD: Thank you, Commissioner
Byron.

All right, so we'll start with the introductions.
The people at the table have been introduced.

To my right, your left, we have representing the

1 Applicant, please state your appearances?

2 MR. THOMPSON: Allan Thompson and co-counsel, Ella
3 Foley Gannon.

4 Behind us are Mark VanPatten, of Tessera, and Bob
5 Therkelsen, consultant to the project.

6 HEARING OFFICER RENAUD: All right. And
7 Intervenor Tom Budlong, raise your hand.

8 MR. SILVER: Larry Silver, for Tom Budlong.

9 HEARING OFFICER RENAUD: Thank you, Counsel.

10 MR. BUDLONG: Tom Budlong, Intervenor.

11 HEARING OFFICER RENAUD: And?

12 MR. BELTRAN: Tom Beltran, Intervenor.

13 HEARING OFFICER RENAUD: Thank you. And to my
14 left, your right?

15 MS. MILES: Loulena Miles, Intervenor for
16 California Unions for Reliable Energy.

17 MS. HOLMES: Caryn Holmes and Christopher Meyer,
18 Energy Commission staff.

19 HEARING OFFICER RENAUD: Good. All right, thank
20 you.

21 I'll just repeat, for those using the microphones,
22 the tall microphones are for the PA system, so please be
23 sure to speak directly into those and keep your voice up.
24 Primarily, because those listening in on the speakerphone
25 need to be able to hear clearly.

1 And the other microphones are leading to the court
2 reporter over there, who is tape recording this proceeding
3 and will eventually transcribe that into a typed booklet
4 that will show everything that was said in the room here,
5 today.

6 And that's one caveat about that is that facial
7 expressions, nods, shakes, that kind of thing don't show up
8 in the transcript.

9 MR. THOMPSON: Thank goodness.

10 HEARING OFFICER RENAUD: What shows up in the
11 transcript is things you say. So, make sure to make all of
12 your statements, answers, questions, et cetera verbal,
13 rather than using expressions.

14 All right. I should also introduce, sitting over
15 there, our Public Advisory, Jennifer Jennings, here to
16 assist members of the public and Intervenors in
17 participating in these proceedings.

18 Well, we had a full day yesterday and we got quite
19 a lot done and we have more testimony today on various
20 topics.

21 I understand the Applicant has witnesses here to
22 testify. Cure has witnesses available by phone for cross-
23 examination on the topics of biological resources and soil
24 and water.

25 And I'm not sure if staff has any further

1 witnesses to present, other than by declaration.

2 MS. HOLMES: If there is any interest in questions
3 on the subject of staff's testimony of project description
4 and executive summary, Mr. Meyers sponsored those sections
5 and is available for cross-examination. Otherwise, as you
6 stated, we have testimony to introduce by declaration.

7 HEARING OFFICER RENAUD: All right, very good.
8 And Mr. Budlong plans to present testimony from Edie Harmon
9 today.

10 MR. SILVER: Mr. Budlong will have a bit of
11 testimony and wants to put in, obviously as exhibits, his
12 previous declarations.

13 With respect to Mrs. Harmon, we're going to call
14 her only for a very limited purpose and reserve any further
15 testimony with respect to issues related to water.

16 HEARING OFFICER RENAUD: Well, yes, soil and water
17 resources is the topic under which she was listed as a
18 witness, so that's not a surprise.

19 MR. SILVER: Yes. Yes, so she'll be called for a
20 limited purpose.

21 And then I think along with the, what I understand
22 to be the other parties, we're going to reserve, for future
23 dates, testimony with regard to the water resource.

24 HEARING OFFICER RENAUD: Well, I think it's
25 understood that any topics that are covered in any depth in

1 the supplemental staff analysis, that will be coming out
2 late June will be --

3 MR. SILVER: And this is essentially the Boyer
4 well.

5 HEARING OFFICER RENAUD: -- we'll go through this
6 again for those things.

7 All right, good. So, without further discussion,
8 let's proceed with Applicant's presentation.

9 MR. THERKELSEN: Hearing Officer Renaud -- is this
10 mike on? This is Bob Therkelsen. And I was wondering if I
11 could take just two minutes to talk about sort of where we
12 are going forward.

13 One of the things that we heard from Commissioners
14 yesterday, from Caryn Holmes, was her list of concerns. And
15 we also are concerned about many of those items. We're
16 also, as you know, very concerned about the schedule in
17 terms of the needing to get a permit the end of August, the
18 first part of September, so that we can do the Flat-tailed
19 clearance and we can get the project under construction to
20 meet the ARRA deadlines.

21 And I guess part of my reaction was, listening to
22 that list, is it sounds like something that we could end up
23 fighting over or we can end up having it wait until later on
24 in the process and potentially kill the project, or we can
25 try to sit down now and figure out how are we going to get a

1 path forward to resolving those issues in a timely manner.

2 Some of those issues we really think probably
3 ought to be subject to legal brief. The issues such as the
4 linkage between the Seeley Wastewater Treatment Facility and
5 this project, you know, whether it's really necessary to do
6 a detailed environmental analysis in this proceeding, as
7 opposed to allowing that to be dealt with under the CEQA
8 process that exists.

9 The other issue is the Dan Boyer well and whether
10 it's really appropriate to go behind that permit, as has
11 been suggested.

12 Some issues, such as the LEDPA, we wonder whether
13 they're not best dealt with in ways that the Energy
14 Commission deals with federal permits, like the US EPA's air
15 permits, in terms of those have their own process, their own
16 schedule. We need to be informed of them and understand
17 their implications, but is it necessary to allow the
18 Commission's -- require the Commission's decision to wait
19 until those permits are completed before we go forward.

20 Others of them can basically be relied upon,
21 hopefully, by the Renewable Energy Action Team. They're
22 established to deal with some of these issues in an
23 expeditious fashion, such as the Flat-tailed horned lizard
24 relocation and probably ought to best see how we can utilize
25 that process to expeditiously find a resolution.

1 But my concern is whether we're going to deal with
2 that path going forward or let it evolve on its own. And
3 one suggestion I would have is that the Committee maybe
4 convene, extend this hearing or convene a status conference
5 sometime very soon to say, okay, let's look at each one of
6 those issues and how they can be dealt with. What are the
7 options for resolving them in a timely fashion, with the
8 entire schedule in mind?

9 So, I would suggest that to the Commission to
10 consider or the Committee to consider, and to do that soon,
11 if we can.

12 HEARING OFFICER RENAUD: All right. I think I can
13 safely speak for the Committee in saying that everything
14 you're saying sounds like a good suggestion, it would be
15 good to try to plot out how things are going to occur.

16 With respect to the issues you mentioned for legal
17 briefing, I think at the end, when we're done with evidence
18 today, we'll bring up the topics of briefing subjects and
19 anybody can throw out topics they would like to submit
20 briefs on. And any brief that is submitted, obviously, the
21 other parties could respond to it.

22 MR. THERKELSEN: Great.

23 HEARING OFFICER RENAUD: So, we'll do that.

24 The other I think probably is more appropriately
25 dealt with at status conference. We could kind of view this

1 as a status conference, but I think we probably ought to go
2 ahead and hear what further evidence we have and maybe we'll
3 have a little bit clearer picture at the end of that.

4 But thank you for those suggestions and I think
5 they're good ones and we'll --

6 MR. THERKELSEN: Good, and I appreciate that. And
7 in terms of the status conference, my concern would be
8 timing, given that it is a separate notice, that's two
9 weeks. And if there is a way to continue this, then that's
10 something maybe we can do the status conference, even later
11 on this week, to be able to start dealing with some of those
12 issues and how do we resolve them, individually.

13 HEARING OFFICER RENAUD: All right, great.

14 MR. THERKELSEN: Thank you, and I'll turn it back
15 over to the attorney.

16 MR. THOMPSON: Are you waiting for me? Oh, sorry.

17 Yesterday there were a couple of questions that
18 were raised in the area of hydrogen, and the hydrogen system
19 and the impacts. I'm not going to try and rephrase those
20 questions, but what we're doing right now is getting on the
21 phone a panel of two. Tricia Winterbauer, who was a -- who
22 did prepare the hazardous materials section, she is not here
23 because no one had any cross for her, in her three sections,
24 and so we're hoping to put her in by declaration.

25 And Tariq -- well, I'll let him give his last name

1 when he gets on the phone. They should be on the phone,
2 momentarily. And, hopefully, this can be brief, but we can
3 answer those questions before going into the other areas.

4 HEARING OFFICER RENAUD: They're going to be on
5 our phone-in?

6 MR. THOMPSON: Yes, they are.

7 HEARING OFFICER RENAUD: All right. Well, let's
8 see if --

9 MR. SILVER: Mr. Hearing Officer, a number of
10 questions were raised that are implicit in Mr. Budlong's
11 testimony concerning hazards relating to hydrogen storage.
12 And so, he had prepared, today, questions with respect to
13 the preparer of the section that deals with plans for
14 dealing with hydrogen explosions, that is the preparer of
15 that section.

16 And so, we ask that that person be made available,
17 at least for cross-examination, by telephone, or someone who
18 has knowledge of the plans, if any, that the Applicant has
19 for treating hydrogen explosions.

20 MR. BUDLONG: Hydrogen hazards, actually.

21 MR. SILVER: Hydrogen hazards.

22 HEARING OFFICER RENAUD: That does sound to me
23 like it would be Tricia.

24 MR. THOMPSON: I think we're -- I think that's who
25 we were producing.

1 Tricia, are you on the phone?

2 HEARING OFFICER RENAUD: Tricia Winterbauer, are

3 you there?

4 MR. THOMPSON: And Tariq?

5 HEARING OFFICER RENAUD: Tariq, are you on the

6 phone?

7 Who is on the phone? I think I heard Chris

8 Bowles, are you there?

9 MR. BOWLES: Yeah, Chris Bowles and Chris

10 Campbell, again.

11 HEARING OFFICER RENAUD: All right, thank you.

12 MR. CASHEN: This is Scott Cashen.

13 HEARING OFFICER RENAUD: Thank you.

14 And who just checked in?

15 MR. HUSSAIN: This is Tariq.

16 HEARING OFFICER RENAUD: All right, Tariq, good.

17 We're still awaiting Tricia Winterbauer.

18 MR. THOMPSON: Do you want to swear the first one

19 in?

20 HEARING OFFICER RENAUD: Yeah.

21 MR. THOMPSON: Tariq?

22 MR. HUSSAIN: Yes?

23 MR. THOMPSON: I can hear you, yes.

24 HEARING OFFICER RENAUD: All right, and is this

25 Tricia Winterbauer?

1 MS. WINTERBAUER: Yes.

2 HEARING OFFICER RENAUD: Good. Okay, thank you.

3 MR. THOMPSON: Tariq and Trisha, I'm going to ask
4 that the court reporter swear you in. They are both in
5 California, I believe.

6 MR. HUSSAIN: That is correct.

7 THE REPORTER: Okay, can you tell me where you're
8 located in California?

9 MR. HUSSAIN: This is Tariq Hussain, I'm in Santa
10 Ana, California.

11 THE REPORTER: Thank you.

12 MS. WINTERBAUER: Tricia Winterbauer here, I'm in
13 Santa Barbara, California.

14 THE REPORTER: Great, thank you. One at a time,
15 please. Tariq, if you could please stand up for me and
16 raise your right hand?

17 MR. HUSSAIN: Yes.

18 Whereupon,

19 TARIQ HUSSAIN

20 was called as a witness herein and, having been first duly
21 sworn, was examined and testified as follows:

22 THE REPORTER: Would you please state your full
23 name for me and also spell it for the record?

24 MR. HUSSAIN: My name is Tariq Hussain, it's T-a-
25 r-i-q, the last name Hussain, H-u-s-s-a, as in apple, -i-n.

1 THE REPORTER: Thank you very much.

2 HEARING OFFICER RENAUD: You can sit down now.

3 MR. THOMPSON: Hopefully, you're not driving,

4 Tariq.

5 THE REPORTER: Okay, and next we have Ms.

6 Winterbauer, Tricia Winterbauer.

7 MS. WINTERBAUER: Yes.

8 THE REPORTER: Would you please raise your right

9 hand for me?

10 MS. WINTERBAUER: Yes.

11 Whereupon,

12 TRICIA WINTERBAUER

13 was called as a witness herein and, having been first duly

14 sworn, was examined and testified as follows:

15 THE REPORTER: Thank you. Would you please state

16 your name for the record, please, your full name, and also

17 spell it for me?

18 MS. WINTERBAUER: Tricia Winterbauer, spelled T-r-

19 i-c-i-a W-i-n-t-e-r-b-a-u-e-r.

20 THE REPORTER: Thank you very much.

21 HEARING OFFICER RENAUD: All right, Counsel,

22 please proceed.

23 MR. THOMPSON: Tricia, are you the same Tricia

24 Winterbauer that submitted prepared testimony in three

25 areas, most specifically one of them being hazardous

1 materials, now designated as Exhibit 1-1-4, 114 in this
2 proceeding?

3 MS. WINTERBAUER: Yes.

4 MR. THOMPSON: And Tariq Hussain, is it true that
5 you conducted the engineering analysis to determine the
6 consequences of hydrogen event on the site for this project?

7 MR. HUSSAIN: That is correct.

8 MR. THOMPSON: Thank you very much. These two
9 witnesses are tendered for cross-examination. I would --
10 one point, since the two witnesses on the phone are in
11 different offices, if the questioner could direct the
12 question at one of them or the witnesses toss it off to the
13 other one so that the court reporter knows who's answering
14 the question, when, it would be helpful.

15 HEARING OFFICER RENAUD: One question I have for
16 you, Mr. Thompson, did Tariq Hussain submit a declaration?

17 MR. THOMPSON: He did not.

18 HEARING OFFICER RENAUD: All right. So, I think
19 since we don't have any testimony from him to be cross-
20 examined, you probably need to establish his testimony
21 through some questions.

22 MR. THOMPSON: Tariq, would you please give the
23 Committee a brief overview of your background and
24 experience, basically a brief resume?

25 MR. HUSSAIN: Sure. I mean, I am a chemical

1 engineer. I have a master's degree in both chemical
2 engineering and special chemical engineering.

3 I have been working in industry and in consulting
4 for the past 27 years. In consulting, most of my experience
5 related to risk assessments from hazardous chemicals,
6 especially hydrocarbons and related chemicals.

7 I have, for the past 20 years, I've been working
8 in California and a lot of that time has been spent in doing
9 risk management plans, process safety management related to
10 both federal and state regulations.

11 MR. THOMPSON: Thank you. And specifically, for
12 this project, would you inform the Commission -- the
13 Committee of what studies or what you did for the -- your
14 analysis of the hydrogen for this project?

15 MR. HUSSAIN: Sure. For this, I helped Tricia in
16 the hazardous materials section of the AFP. Specifically, I
17 analyzed the hydrogen gas being stored and used on site and
18 did a detailed modeling analysis of the type of consequences
19 that you may expect from hydrogen present in different
20 equipment at the site.

21 And this relates to, if this is the right section,
22 2.15 -- section 2.15.

23 MR. THOMPSON: So, if I were to look at section
24 2.15 of what has been determined to be Exhibit 32, which is
25 the May supplement, I would find in there the results of

1 your survey as incorporated by Ms. Winterbauer; is that
2 correct?

3 HEARING OFFICER RENAUD: I'm not sure he heard
4 you.

5 MR. HUSSAIN: That is correct. Can you hear me?

6 MR. THOMPSON: Yes, we can hear you, thank you
7 very much.

8 I would tender these two witnesses for cross-
9 examination.

10 HEARING OFFICER RENAUD: All right, cross-
11 examination. First, by staff?

12 MS. HOLMES: No questions.

13 HEARING OFFICER RENAUD: All right, CURE?

14 MS. MILES: No questions.

15 HEARING OFFICER RENAUD: All right, Mr. Budlong.

16 MR. BUDLONG: Good morning, Tom Budlong here. I
17 have a couple questions with respect to

18 COMMISSIONER BYRON: Can you hear Mr. Budlong
19 okay?

20 MR. HUSSAIN: No, I cannot.

21 COMMISSIONER BYRON: You're going to need to speak
22 very loudly. You tend to trail off at the end, Mr. Budlong.

23 MR. BUDLONG: How's this?

24 MR. HUSSAIN: This is much better.

25 MR. BUDLONG: Much better. I'll see if I can keep

1 it this way.

2 On page 2.15-7 you have four possible scenarios
3 for -- accident scenarios is what they are. Release
4 scenarios you call them.

5 And if I read those right, they look to me like
6 the same scenario, but with different amounts of hydrogen
7 release. The first is 185, the second one 64, the third 55
8 pounds, and the fourth 28,400 pounds. Other than that, they
9 all look like the same thing.

10 Would you agree that that really is one release
11 scenario and different levels of release?

12 MR. HUSSAIN: I'm not sure I understand your
13 question. But I'd like to say these are not the same
14 scenarios, these relate to different pieces of equipment
15 present at different areas of the site.

16 For example, the first scenario relates to the one
17 hydrogen tank that's part of the SunCatcher system, and if
18 you look at the earlier explanation of how these are
19 distributed among the site.

20 So, and you can ask follow-up questions, if I
21 don't understand it. But I think these relate to different
22 pieces of equipment at different locations at the site, and
23 they each have different quantities of hydrogen available in
24 them.

25 MR. BUDLONG: Yeah, I can see that each of these

1 comes from a different -- a different source, I guess you
2 would say.

3 My question is, have you done any other scenarios,
4 any accident scenarios, other than releases from these
5 tanks, with different amounts of hydrogen coming out?

6 MR. HUSSAIN: What, exactly, would you mean by
7 different? I mean, as far as hydrogen is concerned, we look
8 at it as to what is the worst case scenarios that can take
9 place at the site and that is what we try to model.

10 If you're looking at alternative cases, where the
11 impact may be less than the worse case then, no, we have not
12 modeled those.

13 MR. BUDLONG: All right. My next question, which
14 may be related, is related to the pie chart that appears on
15 page 2-15-6, and that's pie chart, the title is
16 "Contributing Causes of Hydrogen Release Accidents." And it
17 lists, the pie chart shows four contributing causes,
18 equipment failure, design flaws, human error and others.

19 And my question is have you done an analysis of
20 the failure modes that are involved in, for instance,
21 equipment failure, what kind of equipment failure?

22 The same with design flaws, and human error and
23 the others?

24 As an example, human error might be lack of
25 training or a person's been on the job for too long and he's

1 not sharp anymore, or he had a fight with his wife the night
2 before and he's not in a good mood. There are all sorts of
3 reasons for human error and all sorts of reasons for
4 equipment failure.

5 And I'm wondering if, in designing your system,
6 you looked at the historical data that went into this chart,
7 in order to guide your design of the system?

8 MR. HUSSAIN: Your question was fairly long, but
9 I'll try and answer it the best I can.

10 This pie chart is based on historical information.
11 When you do a risk analysis, you look at how often hydrogen
12 has been used around different industrial uses, and then how
13 many failures have you had.

14 And this pie chart tries to -- it takes all the
15 recorded accidents that have taken place using hydrogen, and
16 it really analyzes the possible causes.

17 And there were not, in the exhibit, in the pie
18 chart, that we're trying to demonstrate over here that the
19 majority of the accidents that have been recorded using
20 hydrogen is usually equipment failure. And the equipment
21 failure, and some of the examples have been given here and
22 we condensed it. Equipment failure could be any number of
23 things that can take place, which includes a release, a pipe
24 breakage, and anything which has no operator impact on it.

25 Now, in case of human error and that needs a

1 little more detailed analysis, and some of what you cited
2 may be true, but most of it is that there is something going
3 on and the operator does not realize it, and that results in
4 a major release or an act, or accidentally operator taps a
5 piece of equipment with a hammer, or something, not
6 realizing what the impact is going to be.

7 So, there is a number of issues and training can
8 absolutely improve it in the human error issues.

9 I'm not sure if I answered your question
10 completely, but your question was fading as I was trying to
11 listen in.

12 MR. BUDLONG: Oh, I'm sorry. I hope -- if you
13 can't hear me, speak up again because it's important.

14 There are many types of equipment failure. My
15 question is have you analyzed what kind of equipment
16 failures cause this 47 percent in the pie chart. You find
17 all sorts of different kinds of equipment failures, you
18 mentioned pipe breakage, for instance.

19 And have you considered that spectrum of equipment
20 failures, trying to avoid those failures in the design of
21 your system?

22 MR. HUSSAIN: Absolutely. If you look at the pie
23 chart and if you look at the historical information, this is
24 over time. You know, if you go back ten years and you look
25 at what took place, we didn't have sophisticated detecting

1 or devices, or the equipment, itself, has improved over
2 time.

3 So, every time you put in a new project, you
4 consider the failures of the past and you improve on it.

5 So, absolutely, they are taken into consideration,
6 the mistakes of the past, and try to make sure that it
7 doesn't get incorporated into a new design.

8 MR. BUDLONG: All right, I have another question
9 with respect to -- this, now, is from the Draft
10 Environmental Impact Report.

11 HEARING OFFICER RENAUD: Is this the staff
12 analysis in this proceeding?

13 MR. BUDLONG: No, I don't think this is the staff
14 analysis. It's in the DEIS, under section C.5, which is
15 hazardous materials section.

16 And on page C.5-7 it talks about hydrogen as one
17 of the hazardous materials.

18 HEARING OFFICER RENAUD: Do you have an exhibit
19 number for that, is it 300?

20 MR. BUDLONG: It's the DEIS.

21 HEARING OFFICER RENAUD: That should be 300,
22 right?

23 MS. HOLMES: That's correct.

24 HEARING OFFICER RENAUD: Yeah, Exhibit 300. It's
25 the staff analysis.

1 MR. BUDLONG: Yeah, the essay, DEIS. Sorry, now I
2 understand what you're talking about.

3 On your engineering controls, under the hydrogen
4 section, you talk about engineering safety features proposed
5 by the Applicant include use of secondary containment areas
6 surrounding each of the hazardous materials. And this is
7 under the hydrogen section, by the way.

8 So, can you describe the containment areas or the
9 containment that you intend to do for mitigation on
10 hydrogen?

11 MR. THOMPSON: Tariq, this is Allan. Recognize
12 that this is a staff document, but if you can answer the
13 question about the type of controls, please go ahead.

14 MR. HUSSAIN: I think the question is regarding
15 secondary containment area. Whether that's applicable for
16 hydrogen, I'm not sure, I'm not privy to the document that
17 you're quoting. So, I don't think I can answer that
18 question.

19 I think secondary containment, if it's dealing
20 with other hazardous chemicals on the site. What kind of
21 containment they're dealing with for hydrogen, I don't think
22 I'm familiar with that document.

23 MR. BUDLONG: Should I be asking someone else this
24 question?

25 MR. THOMPSON: Well, it's a staff document, I'm

1 not sure.

2 MS. HOLMES: Well, perhaps if containment is part
3 of the Applicant's proposal, perhaps the Applicant has a
4 witness available that can answer questions about
5 containment?

6 HEARING OFFICER RENAUD: I think we did yesterday.

7 MR. BUDLONG: Do you know whether containment of
8 hydrogen is part of your proposal, part of your application
9 for a certification?

10 HEARING OFFICER RENAUD: Did you hear the
11 question, Mr. Hussain?

12 MR. HUSSAIN: Yes, I think that's more of an
13 engineering question right now.

14 HEARING OFFICER RENAUD: Tricia, are you still on?

15 MS. WINTERBAUER: Yes.

16 HEARING OFFICER RENAUD: Did you hear this
17 question?

18 MS. WINTERBAUER: About containment? You're
19 talking about C.5-7, that page?

20 MR. BUDLONG: Yes, in the staff assessment.

21 MS. WINTERBAUER: I don't think we talked about
22 containment in the Applicant's documents, containment of
23 hydrogen.

24 MR. BUDLONG: Then I'm confused as to who can
25 answer this question for me.

1 MS. HOLMES: Staff will have a witness to talk
2 about both the staff assessment that was published in
3 February, as well as revisions that will be published in
4 June that will address the increased storage of hydrogen on
5 site, at the next hearing. We don't have anybody available
6 today.

7 MR. THOMPSON: The other -- the other option would
8 be to ask the question on the record and we'll see if we can
9 get a response. We are not inclined to put witnesses back
10 up, who were here yesterday, you know, and do that game, but
11 we'll see if we can get you a response.

12 MR. BUDLONG: Okay, I'd appreciate it.

13 HEARING OFFICER RENAUD: I would like to ask Mr.
14 Budlong something here. Your questioning seems to imply
15 that you are worried about the danger of hydrogen, what,
16 explosion?

17 MR. BUDLONG: Yeah, hydrogen is -- it's flammable
18 stuff.

19 HEARING OFFICER RENAUD: And so are a lot of other
20 gases.

21 MR. BUDLONG: Yes.

22 HEARING OFFICER RENAUD: Have you established
23 through your own testimony, or testimony of others, that
24 this in fact -- these worst case scenarios, that have been
25 discussed, would pose a danger to persons, property in the

1 vicinity?

2 I think you need to establish that, otherwise your
3 testimony -- the questioning you're asking doesn't really
4 have any relevance here.

5 MR. BUDLONG: You know, yesterday we did talk
6 about the amount of hydrogen that's stored on site, it's a
7 substantial amount of hydrogen according to the documents.
8 And now we're talking about how you mitigate against
9 possible accidents.

10 There is a worst case scenario in the supplemental
11 application, I believe that's part of the record.

12 HEARING OFFICER RENAUD: It is.

13 MR. BUDLONG: And so I'm a little bit confused as
14 to --

15 HEARING OFFICER RENAUD: Well, the testimony so
16 far from the supplement, that you're referring to, indicates
17 the -- I'm no scientist, but just reading from it, "The
18 impact distance from the point of release to each respective
19 scenario end point is estimated to range from 0.04 to 0.3
20 miles."

21 Have you -- you might want to question the witness
22 about those numbers and also what would be within the zone
23 of those distances, in the event of a worst case scenario
24 accident.

25 MR. BUDLONG: That's really not what I'm after,

1 I'm not questioning those numbers.

2 What I want to know about is how is the hydrogen
3 going to be contained in case of a release and it talks
4 about it on page C.5-8, under engineering controls.

5 And I'd like to know something about what's called
6 secondary containment. I can reread it, "Usage of secondary
7 containment areas surrounding each of the hazardous material
8 storage areas."

9 HEARING OFFICER RENAUD: All right. Well, perhaps
10 you ought to ask the author of that whether that meant to
11 apply to hydrogen.

12 MR. BUDLONG: It is under the hydrogen section.

13 HEARING OFFICER RENAUD: All right.

14 MR. BUDLONG: So, I believe it does apply to
15 hydrogen. I can ask --

16 HEARING OFFICER RENAUD: Again, my concern -- you
17 can go ahead and ask questions about what's in the document,
18 but I am concerned that you continue to come back to asking
19 questions that seem to relate to fears or concerns of the --
20 of a injury or damage, property damage resulting from a
21 hydrogen release.

22 And I don't think you've established that such an
23 accident would have -- well, you haven't established what
24 the consequences would be through opinion testimony, and I
25 think you would need to do that to make it relevant for you

1 to need to question witnesses at length about preventing
2 such an event.

3 MR. BUDLONG: Well, let's see if I ask this right.
4 In your worst case scenario you do mention that the result
5 of an accident involving the 28,400 pounds of hydrogen would
6 involve a one PSI over pressure three-tenths of a mile away
7 from the source. Is that correct?

8 MR. HUSSAIN: That is correct.

9 MR. BUDLONG: And can you describe for us the
10 effects of a one PSI over pressure? That doesn't mean
11 anything to many people here, can you describe in terms that
12 people can understand what an up one PSI over pressure would
13 involve?

14 MR. HUSSAIN: Yes, I can. Now, keep in mind this
15 is regulatory guidance on these things, it's not something
16 that we, it's a criteria that we have set up ourselves.
17 There's guidance on that and the guidance states, I'm
18 quoting directly from the regulatory guidance document,
19 "Currently, the guidance states that a one PCI over
20 pressurization, it is capable of partial demolition of
21 houses and serious injuries to population in the area of
22 impact."

23 MR. THOMPSON: Tariq, this is Allan Thompson,
24 again. Would you identify where that guidance comes from?

25 MR. HUSSAIN: Yeah, it is the EPA Risk Management

1 Program guidance on outside consequence analysis.

2 MR. THOMPSON: Thank you.

3 MR. BUDLONG: If I had a one PSI over pressure on
4 the door to my house, how much would be pushing -- how hard
5 would that be pushing on the door to my house?

6 MR. HUSSAIN: Again, I'm quoting from the
7 document, itself, "The one PCI over pressurization is
8 capable of partial demolition of houses."

9 So, you can expect that part of the front door may
10 come off as part of the impact.

11 MR. BUDLONG: Okay, thank you. I see Mr. Renaud
12 shaking his head at me a little bit, saying he's kind of not
13 following.

14 HEARING OFFICER RENAUD: No, I'm just --

15 MR. BUDLONG: Can we go, now, to the containment
16 question?

17 HEARING OFFICER RENAUD: Yeah, would your
18 questions be directed to Ms. Winterbauer then? Just make it
19 clear who you're asking.

20 MR. BUDLONG: Since I'm reading from a staff
21 document, perhaps I'm asking the wrong people.

22 MR. HUSSAIN: Just to clarify, can I say something
23 on that containment?

24 HEARING OFFICER RENAUD: Yes, please.

25 MR. HUSSAIN: All the modeling that was done and

1 the results presented in our document was done without any
2 containment -- secondary containment present, because we're
3 modeling the worst case that can happen.

4 MR. BUDLONG: So, the worst case happens without
5 containment?

6 MR. HUSSAIN: Yes.

7 MR. BUDLONG: Well, I'm sorry, I guess it's called
8 secondary containment. Primary is the tank that's going to
9 blow up in this scenario.

10 Now, this is a staff document, should we be asking
11 this question of staff?

12 HEARING OFFICER RENAUD: It depends what your
13 question is. If there is a statement in the staff document
14 that you would like to question another witness about, you
15 can do that. Remembering that the witness didn't write it
16 but you could ask, for example, his opinion of the statement
17 in that document.

18 MR. BUDLONG: Okay. Well, being a staff document,
19 I think I've gotten the signal here that I should be asking
20 staff the question and not the witnesses on the phone.

21 HEARING OFFICER RENAUD: Well, if it's a follow on
22 to the question that was just answered by Mr. Hussain, you
23 can go ahead. His assumption was worst case is no secondary
24 containment.

25 MR. BUDLONG: All right, I think that's

1 sufficient.

2 I do have another question with respect to the
3 worst case scenario and maybe a little better example is
4 what would be the effect of this one PSI over pressure from
5 the worst case scenario on, for instance, employees at the
6 Plaster City Factory, or traffic on I-8, adjacent to the
7 site?

8 MR. HUSSAIN: Can you repeat that question, you
9 were fading away at the end?

10 MR. BUDLONG: Can you describe the effect of a
11 worst case explosion, the one PSI over pressure, on
12 employees at the Plaster Factory, which is imbedded in the
13 site, and on traffic on I-8, which is the south border of
14 the site, or traffic on I think it's the Evan Hughes
15 Highway, which is the north border of the site?

16 MR. HUSSAIN: Let me try -- I didn't get the first
17 one, but I'll try and answer the second part of your
18 question on the highways that are passing by, near the site.

19 HEARING OFFICER RENAUD: The first one, Tariq, was
20 the Plaster City Gypsum Processing Plant.

21 MR. HUSSAIN: Which is located outside the site?

22 HEARING OFFICER RENAUD: It's on the northeast
23 corner.

24 MR. THOMPSON: North of the site, Tariq.

25 MR. BUDLONG: It actually projects into the site,

1 they have to build the SunCatchers around it.

2 MR. HUSSAIN: Now, if you consider the impact from
3 a single SunCatcher, which is only 11 cubic feet, it's only
4 33 feet from the site, so that does not really go beyond,
5 much beyond the site boundaries.

6 Now, what we modeled as part of the SunCatcher
7 assembly is that there are some tanks present with hydrogen.
8 And the nearest freeway I think from the boundary is I-8, it
9 would be about 300 feet from the site boundary. And the
10 off-site consequence from even the most, the biggest
11 assembly of each SunCatcher is only about 117 feet.

12 So, regarding the placement of all these equipment
13 on the site, they will be more than 300 feet from I-8. So,
14 in that context, even the worst case scenario is not going
15 to impact traffic on each -- any of the freeways.

16 Now, if the first part of your question is the
17 Plaster City site, that is beyond the site boundaries and we
18 don't expect any of the worst case scenarios to go beyond
19 the site boundary.

20 So, to answer your question, there will be very
21 minimal impact to the employees over there in case of a
22 worst case scenario.

23 MR. BUDLONG: The Plaster City site projects into
24 the SunCatcher field, there's SunCatchers on three sides of
25 them. And are you saying that any effect stops at the

1 border of the SunCatchers and doesn't go beyond?

2 MR. HUSSAIN: Yeah, the SunCatcher, itself, only
3 has 11 standard cubic feet of hydrogen, so very minimum
4 impact.

5 But the assembly related to SunCatcher, which is
6 further away from the site boundary, has a 300 feet impact.
7 The placement of it is going to be such that it's going to
8 be 300 feet away from the site boundaries.

9 MR. BUDLONG: Well, the worst case scenario says
10 three-tenths of a mile, which is more than 300 feet.

11 MR. HUSSAIN: The worst case for each of the
12 assembly is 0.06 of a mile, which is 317 feet.

13 The .03 of mile is from the satellite system,
14 which is located right in the center of the site and there's
15 a map attached to it that shows you the impact from that.

16 MR. BUDLONG: Okay, thank you.

17 I think that's all I have on hydrogen, thank you.

18 HEARING OFFICER RENAUD: All right, thank you.

19 Applicant, any other cross-examination?

20 MR. THOMPSON: No, thank you.

21 HEARING OFFICER RENAUD: All right. Tricia
22 Winterbauer, do you plan to put her on?

23 MR. THOMPSON: She was just part of the panel in
24 case there were questions about how the off-site
25 consequences analysis were absorbed into her exhibit, that

1 was the only reason for her. So, Applicant would propose
2 letting these two witnesses go.

3 COMMISSIONER BYRON: Question.

4 HEARING OFFICER RENAUD: Question by Commissioner
5 Byron, here.

6 COMMISSIONER BYRON: I believe that my question is
7 directed to Mr. Hussain, or a couple of questions. And that
8 is, just reading the supplement -- forgive me, the
9 supplement to the Imperial Valley AFC, the docket is May 5th.
10 I'm not sure what the record number is, but you've been
11 referring to it, Mr. Hussain.

12 It indicates in Table 215-5 that there are
13 applicable regulatory thresholds that apply to storages in
14 excess of 10,000 pounds of hydrogen.

15 I don't believe it states in this document whether
16 or not the storage will be in compliance with those
17 requirements. Can you tell me if they will?

18 MR. HUSSAIN: Yes, Commissioner, they will be in
19 compliance with both federal and state regulation. The
20 federal regulation that applies is the RNP regulation. And
21 the state regulation is the Cal-Op regulation. And it will
22 be in compliance with both of them.

23 COMMISSIONER BYRON: And is there any public that
24 would be within range of your projected scenario's maximum
25 potential damage from those projected scenarios?

1 MR. HUSSAIN: What we projected in the worst case
2 scenarios is that it will remain mostly -- or totally within
3 the site boundaries.

4 COMMISSIONER BYRON: Which is it, mostly or
5 totally?

6 MR. HUSSAIN: Totally.

7 COMMISSIONER BYRON: And what kind of damage could
8 result from equipment from the worst case scenarios that
9 you've projected?

10 MR. HUSSAIN: Again, according from regulation, it
11 could -- if it's within the impact zone, it could cause
12 severe damage to the equipment.

13 COMMISSIONER BYRON: Will there be any projectiles
14 or, indeed, there's a tank -- I don't know what pressures,
15 forgive me. Give me max pressure for one of your holding
16 tanks?

17 MR. HUSSAIN: For one of my holding tanks, the
18 biggest is, the max pressure, as I remember offhand, is
19 2,500 PSI.

20 COMMISSIONER BYRON: Okay, that's pretty
21 significant.

22 MR. HUSSAIN: Yes.

23 COMMISSIONER BYRON: What kind of damage will
24 result from a catastrophic failure of one of these tanks? I
25 assume they're spherical tanks?

1 MR. HUSSAIN: Yes. But the way we modeled that,
2 there is a release of the hydrogen, itself. And once it's
3 released, there has to be an ignition source. Once the
4 ignition source is there, the released hydrogen explodes
5 into fire.

6 And from the heat, itself, and the over
7 pressurization, the damage is caused.

8 The equipment does not result in product being
9 projected all around the area. That's not the worst case.
10 The worst case is the heat and the over pressurization,
11 that's what we model.

12 COMMISSIONER BYRON: So, the pressure vessel,
13 along, at --

14 MR. HUSSAIN: It may just disintegrate at that
15 kind of heat.

16 COMMISSIONER BYRON: And give me a sense of the
17 diameter of the vessel, please?

18 MR. HUSSAIN: I don't have that in front of me,
19 but it's included in the submittal.

20 COMMISSIONER BYRON: Ms. Winterbauer, do you have
21 any information on the size of the pressure vessel?

22 MR. HUSSAIN: If you can give me two minutes, I
23 can get it for you.

24 MS. WINTERBAUER: Would it be nine feet in
25 diameter by 30 feet long? Tariq?

1 MR. HUSSAIN: I'm back.

2 MS. WINTERBAUER: On page 215-3, the hydrogen
3 tank, nine feet in diameter by 30 feet long?

4 COMMISSIONER BYRON: So, it's a cylindrical tank?

5 MS. WINTERBAUER: Is that correct, Tariq?

6 MR. HUSSAIN: Yes, it is.

7 COMMISSIONER BYRON: Okay. Well, I think I'll
8 turn it over to Commissioner Eggert. You know, you have a
9 couple of engineers on this Commission that would love to
10 get into these issues in great detail and we should avoid
11 doing that. But we're also trying to help Mr. Budlong along
12 here in understanding the nature of the risk that we've got
13 here.

14 You've answered my questions, I'm generally
15 satisfied. These are not terribly significant pressures,
16 there's much higher storage hydrogen pressures that are
17 located in population centers and this one is very isolated
18 from a population center. So, I've got my questions
19 answered and I'll turn it over to Commissioner Eggert.

20 MR. HUSSAIN: Commissioner, can I correct one
21 statement I made? The hydrogen tank is at 600 PSI.

22 COMMISSIONER EGGERT: 600 PSI. So, yeah, I guess
23 not to spend too much more time on this, but I would just, I
24 guess, as a point of reference, the Commission is actually
25 involved in the funding of a hydrogen station that's located

1 in the center of the UC Irvine campus, which contains
2 hydrogen at about 10,000 PSI and fuels vehicles on a daily
3 basis thus far with no incident. And there are quite a
4 number of codes and standards that apply to the safe use of
5 hydrogen as a vehicle fuel, as well as a working gas for
6 industrial purposes.

7 And I guess a couple questions that I would have
8 is that I presume, I haven't read it in the document, that
9 the systems comply with all the applicable -- for example,
10 the tanks would comply with the ASME requirements for steel
11 tanks and that the various setbacks, and everything, would
12 comply with NFPA standards. Is that correct?

13 MR. HUSSAIN: That is correct. And also, it would
14 apply to pressure vessel standards.

15 COMMISSIONER EGGERT: Okay. And then I guess
16 there is a statement here, in the staff analysis, I just
17 wanted to get your sense. It says that "Staff's conclusion
18 that an unconfined hydrogen explosion is not plausible and
19 will not occur at the proposed facility."

20 Is that something that you would agree with or --

21 MR. HUSSAIN: I would definitely agree with that.
22 Remember, it has to have a release of a certain amount of
23 hydrogen and there has to be a spark source present to cause
24 that kind of scenario.

25 COMMISSIONER EGGERT: Okay. Okay, thank you very

1 much.

2 HEARING OFFICER RENAUD: All right, any further
3 questions of either witness?

4 MR. BUDLONG: Yeah, I have one more question on
5 the effect. Mr. Alimamaghani's property is surrounded by
6 SunCatchers, it's a 160-acre plot and it shows on all the
7 maps, and what would be the effect of the worst case
8 scenario of anything that's on his property?

9 HEARING OFFICER RENAUD: Mr. Budlong, I think
10 you'd need to establish what's on that property. For all we
11 know, it's vacant.

12 MR. BUDLONG: As far as I know, it's vacant right
13 now. What Mr. Alimamaghani may do with it is an unknown.
14 He did speak yesterday of putting a house on it. So, it's
15 unknown what he would do with it.

16 HEARING OFFICER RENAUD: If you can answer that,
17 fine, if you understand.

18 MR. HUSSAIN: I didn't understand the question, I
19 couldn't hear him.

20 MR. THOMPSON: Tariq, did you -- and this is Allan
21 Thompson. Tariq, in your analysis did you consider
22 consequences to not-a-part parcels, specifically Mr.
23 Alimamaghani, within the site? I believe it's a vacant
24 parcel.

25 MR. HUSSAIN: Yes. I mean, most of the worst case

1 remains within the site, itself. So, off-site consequence
2 is -- in present scenarios, is not there.

3 MR. BUDLONG: Thank you.

4 HEARING OFFICER RENAUD: All right, does anyone
5 have any further questions of either witness?

6 All right, thank you, witnesses, you may be
7 excused.

8 Counsel, do you wish to move into evidence the
9 declaration of Trisha Winterbauer?

10 MR. THOMPSON: Yes, the Exhibit 114.

11 HEARING OFFICER RENAUD: All right, any objection?
12 That will be admitted.

13 All right, do you have further witnesses to call
14 today?

15 MR. THOMPSON: Yes.

16 HEARING OFFICER RENAUD: Please.

17 MS. FOLEY GANNON: We'd like to next call Dr. pat
18 Mock and Michael Moore -- I mean, Michael Wood, sorry.
19 Michael Moore, if he's here, would be a great help as well.
20 But instead we'll go with Michael Wood, instead, he may know
21 more about biology, I'm not sure.

22 I love Michael Moore.

23 MS. HOLMES: Do you want this made into a movie?

24 MS. FOLEY GANNON: No, I don't want this made into
25 a movie. Let's be clear on the record on that.

1 (Laughter.)

2 MR. HUSSAIN: Is it okay to leave the conference?

3 HEARING OFFICER RENAUD: You may or you may
4 continue to listen, as you wish.

5 MR. HUSSAIN: But we have -- there are no more
6 questions directed towards us?

7 HEARING OFFICER RENAUD: No, no more questions.

8 MR. HUSSAIN: And we will leave the conference
9 then.

10 HEARING OFFICER RENAUD: Thank you.

11 THE REPORTER: Would you please raise your right
12 hand?

13 Whereupon,

14 MICHAEL WOOD

15 was called as a witness herein and, having been first duly
16 sworn, was examined and testified as follows:

17 THE REPORTER: Thank you. Would you please state
18 your name -- I mean, state for the record your full name and
19 spell it for me.

20 MR. WOOD: Michael Wood. The last name W-o-o-d.

21 THE REPORTER: Thank you.

22 Whereupon,

23 PATRICK MOCK

24 was called as a witness herein and, having been first duly
25 sworn, was examined and testified as follows:

1 DR. MOCK: Yes.

2 THE REPORTER: Thank you very much. Would you
3 please have a seat and state your full name for the record,
4 and spell it for me?

5 DR. MOCK: Patrick Mock, M-o-c-k.

6 MS. FOLEY GANNON: Good morning, let's start. Dr.
7 Mock, are you the same person who gave testimony previously
8 in these proceedings, the first which was marked as Exhibit
9 110, as well as supplemental testimony that was submitted on
10 May 10th and marked yesterday as Exhibit 115, and May 17th,
11 marked yesterday as Exhibit 116?

12 DR. MOCK: Yes.

13 MS. FOLEY GANNON: And do you have any corrections
14 or additions to make to that testimony.

15 DR. MOCK: No, I do not.

16 MS. FOLEY GANNON: Okay, Dr. Mock, if you could
17 first start off by describing, briefly, the overall survey
18 efforts that have been conducted on the site with regard to
19 biological resources?

20 DR. MOCK: Yes. We began the environmental
21 evaluation of the site in 2007, spring of 2007. We
22 conducted surveys for Flat-tailed horned lizard and rare
23 plants across the site.

24 The actual survey area in 2007 and 2008 was much
25 larger than the current footprint of the site.

1 We coordinated our protocols, survey protocols
2 with the agencies and got their concurrence on the approach
3 and level of effort at that time.

4 Both 2007 and 2008 were relatively dry years. In
5 fact, 2007 was a very dry year in that we did not find a
6 significant amount of blooming occurring in that year, so we
7 proposed to do a repeat botanical survey in 2008.

8 The agencies were concerned that we were possibly
9 having a negative -- a false negative in terms of detection
10 of rare plants due to the dry conditions and so they
11 requested that we repeat the botanical surveys in 2010.

12 And those surveys were conducted under Mr. Wood's
13 coordination.

14 MS. FOLEY GANNON: Do you have an estimate of the
15 number of person hours that has been spent as part of the
16 survey efforts?

17 DR. MOCK: A total of around 6,700, a little more
18 than 6,700. Oh, 47 -- I'm sorry, 4,700, I'm doing a little
19 dyslexia there. Four thousand six hundred and seventy,
20 sorry.

21 MS. FOLEY GANNON: After you have 60 years of
22 experience, as some of our witnesses yesterday, I'm sure you
23 won't be making that kind of error.

24 DR. MOCK: Yes.

25 MS. FOLEY GANNON: Let's turn, now, to specifics

1 with the Flat-tailed horned lizards. Did you come up with a
2 population estimate based upon your survey efforts and can
3 you describe, just briefly, the survey efforts for the Flat-
4 tail horned lizard?

5 DR. MOCK: Right. We did -- essentially, since
6 the site was so large, we were surveying something on the
7 order of 9,000 acres in 2007, we took a sample plot approach
8 where we sub-sampled the site. We essentially surveyed
9 grossly around 40 percent of the site using four hector
10 survey plots, which we developed that methodology in
11 consultation with the BLM staff.

12 And so we surveyed, essentially, 332 four hector
13 plots across the study area. And we detected a total of
14 four individual Flat-tail horned lizards and nine Desert
15 horned lizards. Desert Horned lizard is a non-sensitive
16 species of horned lizard that also occurs on the site.

17 MS. FOLEY GANNON: And based upon these findings
18 did you make any conclusions about the population levels
19 that you would anticipate to be present on the entire site?

20 DR. MOCK: Well, it really goes to the issue of
21 what's the detectability of the species? We did do the
22 survey during the optimal time of the season, in May, when
23 presumably the bulk of the population is active on the
24 surface.

25 And some of the published detectability rates are

1 in excess of 50 percent in really optimal habitat. Our
2 feeling was that this habitat was sub-optimal, and so the
3 detection rate was assumed to be much lower than 50 percent.
4 We assumed a 25 percent, initially, detection rate.

5 And so given that we only found four animals,
6 total, and three of them were essentially associated with
7 the main project site, we applied the 25 percent detection
8 rate and that would, you know, mathematically results in a
9 40 percent coverage, it mathematically results in a 20 to 30
10 individuals would be expected to occur on site.

11 If you want to be more conservative in using only
12 a five percent detection rate, that would inflate the
13 estimate to about 150 animals.

14 The main concern is whether this habitat is
15 optimal because most of the plot surveys where the detection
16 of the animal is, or is best known, are in optimal habitat.
17 Basically, they're not random plots, they're plotted on
18 areas where they know the animal exists in very high
19 densities and they're monitoring them through time to assess
20 the status of the population.

21 And so, applying densities detected in optimal
22 habitat to this site we thought was probably overly
23 conservative. And so the estimate, some people have stated
24 estimates in the thousands, and our -- our field biologists
25 were of the opinion that if there were thousands of animals

1 on the site, we would have found more animals during our
2 surveys.

3 MS. FOLEY GANNON: Can you describe the basis of
4 how you determine if habitat is optimal, or sub-optimal,
5 what are the things that you'd be looking at to be making
6 that kind of determination?

7 DR. MOCK: Well, a lot of it goes to -- in terms of
8 detectability, a lot of it goes to how granular or how fine
9 the sands are. In their optimal plots, the sands are much
10 finer and so you can detect the tracks of the animals and
11 actually follow the tracks to the actual animal.

12 And so your detection of the species is much
13 higher in finer sands.

14 But the densities are very high in those areas.
15 Just last week they had a workshop to train additional
16 biologists for these surveys and they take the workshop out
17 to the optimal plots. And last week they found ten animals
18 in less than an hour.

19 And so, in the high density, occupied areas you
20 are able to find animals fairly easily.

21 MS. FOLEY GANNON: But when you're speaking about
22 optimal habitat, does that mean the ability to detect them
23 or does that also go to the quality of the habitat?

24 DR. MOCK: The quality habitat. I mean, the sites
25 supports -- a significant percentage of the site supports

1 desert pavement, which generally supports less sandy areas.
2 And also, it's obvious that the food resource for this
3 animal, the ants, ant mounds are also of lower density in
4 the desert pavement areas.

5 So, we think about the -- we estimated something
6 on the order of 20 percent of the site has this desert
7 pavement type of condition. And so we think if horned
8 lizards are present there, they're probably even lower than
9 elsewhere on the site.

10 MS. FOLEY GANNON: And I think you just briefly
11 touched on it, I think in the staff assessment that they had
12 assumed a population of about three to five thousand. Do
13 you have an opinion upon whether you would assume that was
14 accurate, or an over-estimate, or what your feelings would
15 be about that?

16 DR. MOCK: It's not clear to me how they got that
17 estimate. I mean, when we developed an estimate, we used 50
18 percent of the -- if you use a 50 percent density estimate
19 from the optimal plot data, you would give something on the
20 order of 3,000 or so. Five thousand would be assuming a
21 straight, no discount for reduced quality of habitat.

22 MS. FOLEY GANNON: And there has been, there were
23 comments made yesterday, and as well as a discussion in the
24 staff assessment about the potential for indirect impacts to
25 the Flat-tailed horned lizard population in the area and

1 mostly related to the connectivity between management areas.

2 Can you speak about that potential impact to occur?

3 DR. MOCK: Well, yeah, the site is surrounded by
4 highways, and railroads, and freeways, basically. The
5 Interstate 8 is a fairly substantial linear structure and
6 you have the railroad that goes through the Plaster City
7 Factory area, and you have Evan Hughes Highway.

8 Along Evan Hughes Highway and the railroad there
9 are several substantial trestle type bridges that are
10 anywhere from 30 to 50 feet in spanning, and the bottom of
11 those trestle spans are sandy habitat.

12 And so we felt that those trestle locations are
13 probably suitable movement areas or were accessible to the
14 lizard.

15 And so on the northern boundary of the site, those
16 linear structures of the highway and the railroad are more
17 of a filter, rather than a barrier, they can probably get
18 through on a consistent way.

19 So, there's probably some possible exchange
20 between the site and suitable habitat north of the property.

21 Unfortunately, Interstate 8 is not the same. The
22 culverts that go underneath Interstate 8 are variable. Some
23 of them are box culverts, others are just round, corrugated
24 pipes. We looked at each culvert to see whether they're
25 even accessible to the lizards.

1 Almost all of the culverts are perched in that --
2 the erosion of the water that flows through them during the
3 peak flood flows erodes out the sandy soil below them to
4 where they're -- to where the actual pipe outline is perched
5 several feet above the ground. And, therefore, the lizards
6 would have to basically be little mountain climbers to get
7 those outlets to access. This would be true on both sides,
8 in many cases.

9 There was one box culvert, it's actually a double
10 box culvert, that we didn't have this perched condition, and
11 so we said that at least one of the box culverts is
12 accessible to the lizard.

13 So, as an overall assessment, we felt that the
14 Interstate 8 was a substantial barrier to movement, with the
15 one exception of the one box culvert.

16 MS. FOLEY GANNON: So, did you make a conclusion
17 on the project's overall impact on connectivity for the
18 Flat-tailed horned lizard?

19 DR. MOCK: Our conclusion is that they have -- the
20 site is accessible from the north and is probably
21 inaccessible, for the most part, from a functional point of
22 view, from a demographic point of view along the 8 southern
23 boundary.

24 Let me preface that, is that there are
25 opportunities elsewhere along I-8 to get past that barrier.

1 Coyote Wash occurs, is a large wash that occurs west of the
2 site and there's a substantial bridge crossing that wash.
3 And so that is the location where we believe the predominant
4 connectivity is for this animal.

5 MS. FOLEY GANNON: And will this project impact
6 connectivity?

7 DR. MOCK: No, it will not.

8 MS. FOLEY GANNON: And in assessing the overall
9 impact to the species, I assume you were looking at what you
10 assumed to be the population, the quality of the habitat.
11 Did you also evaluate the nature of the project, are there
12 any specific features about it which would dictate the level
13 of impact that would be likely to occur to the species?

14 DR. MOCK: Well, given the industrial nature of
15 the site, even though the implementation of the project is
16 somewhat soft in that it's not a mass grading type of
17 operation, in terms of construction, and there's going to be
18 some fairly cumulatively substantial amount of vegetation
19 maintained on site, about a third of the site is going to be
20 retained in a non-disturbed condition in terms of it's not
21 going to be brushed or disturbed directly, they're going to
22 be in relatively small, isolated islands.

23 And so, from an edge effect type of condition and
24 just the long-term viability of the site with this project,
25 we felt that this site was not going to retain the long-term

1 sustainable biological resource values that would justify
2 any kind of -- giving them any substantial on-site credit
3 for biological resources. And so, we recommended an off-
4 site mitigation program, rather than an on-site conservation
5 program.

6 MS. FOLEY GANNON: And as described in the staff
7 assessment, and as I believe proposed by the Applicant, the
8 mitigation would be at a one-to-one ratio?

9 DR. MOCK: For the site, itself, and a five-to-one
10 ratio for habitat loss along the transmission line, which
11 passes through -- that transmission line corridor was
12 included within the boundaries of the Yuha Desert Management
13 area.

14 And so those mitigation ratios are dictated by the
15 Flat-tailed horned lizard management strategy that all of
16 the wildlife agencies have signed up to.

17 MS. FOLEY GANNON: And in your professional
18 judgment, is that adequate to mitigate impacts to Flat-
19 tailed horned less who are less than significant level?

20 DR. MOCK: Yes, it is, because the strategy has
21 already pretty much implemented, the long-term
22 implementation strategy that's intended. All of the lands
23 intended for conservation for the species have been
24 identified and there's been a long-term acquisition program
25 for any private lands within those boundaries of the

1 management areas.

2 And this project would contribute, the mitigation
3 lands that this project would contribute would contribute
4 towards that mitigation strategy.

5 MS. FOLEY GANNON: And the Applicant is proposing
6 to modify Biological Condition 9, which pertains to the pre-
7 construction survey requirements. Have you reviewed the
8 proposed changes to that condition?

9 DR. MOCK: Yes, I have.

10 MS. FOLEY GANNON: Can you comment upon the impact
11 of that change on the species?

12 DR. MOCK: That condition is -- the intent of that
13 condition is to minimize the mortality of the horned lizard
14 by relocating them out of -- basically, moving them out of
15 harm's way during construction. And implementation of that
16 condition would need to occur regardless of the time of
17 year. Whenever you're constructing, we're going to have a
18 biological monitor on site to detect, and capture and
19 relocate animals as they're detected.

20 The opportunity for finding these animals is
21 variable throughout the year. You can find animals in
22 almost every month of the year, if you look hard enough, but
23 certain times of the year they're easier to find than
24 others.

25 Granted that, at least it's our opinion, that the

1 number of lizards that we're going to find is going to be
2 relatively low, our expectation, and it's also the
3 expectation of the BLM biologists are the number of animals
4 that we're actually going to find and relocate is going to
5 be in the tens, maybe a hundred at most, but more likely the
6 tens during this entire process of monitoring.

7 So, the timing of the surveys is not -- is not the
8 focus of dictating the construction schedule.

9 MS. FOLEY GANNON: And the timing of the surveys,
10 was that considered -- when you were giving your
11 professional judgment on whether you believe that the impact
12 to the species will be mitigated to less than a significant
13 level, are you relying on those surveys as part of that
14 decision?

15 DR. MOCK: No, because the -- there's -- even if
16 we throw a thousand biologists at this site, we're not going
17 to find every single lizard, so there's going to be some
18 residual population on site after construction is done.

19 And the BLM has not required a exclusion fence,
20 and so there's probably going to be some lizards re-invading
21 the site after all the construction is done, as well.

22 MS. FOLEY GANNON: And there was reference
23 yesterday to the development of a translocation plan. Can
24 you update the Commissioners on what the status of that is?

25 DR. MOCK: We provided the BLM and the Fish and

1 Wildlife Service a draft of that plan and we've received
2 comments from the BLM and expect comments from the Fish and
3 Wildlife Service sometime after the 26th of this month.

4 MS. FOLEY GANNON: And for clarity's sake, the
5 regulatory status of the Flat-tailed horned lizard is
6 currently?

7 DR. MOCK: It is currently proposed for listing
8 under the Federal Endangered Species Act.

9 MS. FOLEY GANNON: And under the California
10 Endangered Species Act?

11 DR. MOCK: It is not proposed.

12 MS. FOLEY GANNON: So, to comply with the
13 Endangered Species Act the Applicant is?

14 DR. MOCK: The BLM is under -- is essentially
15 doing a parallel process that was comparable to the Section
16 7 consultation process with the Wildlife Service. It's
17 called a conference.

18 So, the BLM has requested a conference letter from
19 the Fish and Wildlife Service. That conference letter would
20 include terms and conditions, and recommendations,
21 conservation recommendations that would be comparable to
22 what's in a biological opinion, if this species were listed.
23 And that conference letter would, if the species were
24 ultimately listed, could easily be turned into a biological
25 opinion after that legal status has changed.

1 MS. FOLEY GANNON: Thank you. Let's move on to a
2 discussion of the Peninsular Big Horn Sheep. In your
3 rebuttal testimony -- there has been a lot of discussion
4 about whether this site is a site which is likely to be
5 utilized regularly by the Big Horn Sheep and whether it's --
6 and its importance to the long-term viability of this
7 species.

8 Can you just, as a starting point, give us your
9 overall conclusions about this site's role in this species'
10 presence in the area?

11 DR. MOCK: Let me say that when we started this
12 project, we typically consult -- the BLM consults with the
13 Wildlife Service and asks them what species they should be
14 focusing in on in terms of assessment, and surveys, and the
15 Big Horn Sheep was not on that list of species of concern.
16 The focus has always been the Flat-tailed horned lizard,
17 from the Wildlife Service perspective.

18 And we did two years' worth of surveys on the
19 site, we had people on the ground in February, and March,
20 and April and May during those two years. And so when
21 another consultant detected this species in March of 2009,
22 everyone was really, really surprised.

23 If you look at the recovery plan, the recovery
24 plan for this species outlines the essential habitat for the
25 species, basically, the focal areas that should be the area

1 of management concern. And this site is many miles from
2 that boundary of essential habitat.

3 Certainly, the species obviously does make it down
4 to the flatlands of the Imperial Valley, but the recovery
5 plan does not contemplate that those habitats are considered
6 essential for the species, and that has not been the focal
7 area for management, for surveys, or anything like that.

8 The BLM -- or the Fish and Game biologist, Randy
9 Bota, communicated to us that he has no data to indicate
10 that the species has been detected prior to the 2009
11 sighting within the immediate vicinity of the project.

12 And Daniel Stewart, at the BLM local office,
13 related to me that typically the people doing camping and
14 off-road vehicle recreating in the vicinity, typically would
15 report such unique sightings, of the Big Horn Sheep, if they
16 were made, and the BLM has no record of any public sightings
17 of the species in the vicinity of the site.

18 So, the expectation that this site is used
19 consistently or even inconsistently doesn't really match up
20 with the substantial evidence. It was a very surprising
21 detection. I would call it an extralimital detection. You
22 know, we have vagrant bird sightings, this is a vagrant
23 sheep sighting, evidently.

24 MS. FOLEY GANNON: Any other reasons, based upon
25 the habitat that's present on this site, or its location in

1 the vicinity that you think -- give an explanation for why
2 this is not an area of the flatlands that you would assume
3 would be regularly utilized by the sheep?

4 DR. MOCK: Well, one, it's surrounded by the major
5 infrastructure of roadways and railroads, which are
6 impediments to their movement, typically.

7 In other areas of Bighorn Sheep ranges freeways
8 have been cited as being literally barriers to movement.
9 And so, it was a surprise to find the animals past the
10 railroads and highways.

11 And where they were going, we do not know. They
12 could have just been made it into the thing and it's a cul-
13 de-sac and they left it the same way they went, and went
14 back to where they came from.

15 The main -- the Wildlife Service, in their
16 evaluations of habitat, have a list of what they call
17 essential elements of habitat, or critical habitat in their
18 parlance, and this site does not support the majority of the
19 essential habitats.

20 The main criteria -- element that this site
21 supports is it provides some foraging, plant foraging
22 resources for this animal, but so does all the lands north,
23 and west, and east of this -- northwest and south of the
24 site. So, that's not surprising that if food is there and
25 they're present, they're going to be eating it.

1 MS. FOLEY GANNON: So, based upon your knowledge
2 of this site, its location, the vicinity, your anticipated
3 use of this site by the Bighorn Sheep, have you made any
4 conclusions about the project's affect on the species?

5 DR. MOCK: Well, the main issue with this is that
6 you may have a sheep wander by, but they won't remain in the
7 vicinity during construction because sheep don't like to be
8 hanging out near heavily traveled areas by humans. Which
9 have made it all that much more surprising because they made
10 it onto the site, because to the north and west of the site
11 is a very heavily used area for off-road vehicle activity,
12 in terms of recreation, and they basically had to run the
13 gauntlet of getting past those humans there to make it to
14 the site.

15 And so, our expectation is if they show up again,
16 it will be a surprise again.

17 MS. FOLEY GANNON: Thank you. The final issue I'd
18 like to discuss with you this morning is with regard to the
19 impacts associated, the potential biological impacts
20 associated with the Seeley Water Treatment Plant expansion.
21 And I understand that this is an analysis that's being
22 undertaken by another company for the Seeley Waste Treatment
23 project.

24 But have you reviewed any of the information
25 related to the work that has been conducted and the

1 resources that are located on that site?

2 DR. MOCK: Yes. The consulting firm has
3 communicated with us the current status of their efforts.
4 We have four protocol surveys that they're doing, they've
5 done protocol surveys for Yuma Clapper Rail, Black Rail, and
6 they have ongoing surveys for Least Bell's Vireo and Willow
7 Flycatcher.

8 The Rail surveys have been completed and they are
9 negative, they have not detected any listed species of Rail.
10 And to date there's been no detections of any listed
11 species. And so the Vireo surveys that have been done to
12 date have been negative as well.

13 They've also done rare plant surveys, they've done
14 two rounds of surveys, early and late spring surveys, and
15 those are negative as well for species, special status
16 species.

17 MS. FOLEY GANNON: And to give some context to
18 this, can you describe the overall site conditions of the
19 Seeley Wastewater Treatment Plant?

20 DR. MOCK: The actual area that they plan to
21 develop or redevelop, actually, is already developed. It's
22 the actual plant site, itself, that has equipment and
23 various, you know, ongoing development activity on it.

24 The main area of concern in terms of habitat is
25 off-site or directly adjacent to the site, and so those are

1 the areas where the potential occupation by listed species
2 would be expected.

3 And then the issue of concern is indirect impacts,
4 not direct impacts. They're not proposing direct loss of
5 native vegetation, per se, but the concern is whether the
6 redirecting the water from its current flow into an outflow
7 channel that goes -- eventually makes it down to the Salton
8 Sea might influence vegetation downstream.

9 And so, the consulting firm is doing the hydrology
10 study to determine whether that diversion of water might
11 have that effect.

12 MS. FOLEY GANNON: And to clarify, you said that
13 the surveys that have been conducted to date for special
14 status species, both wildlife and for plants, have been
15 negative?

16 DR. MOCK: So far, yes.

17 MS. FOLEY GANNON: And there are two surveys which
18 are still ongoing and those are for what species again, I'm
19 sorry?

20 DR. MOCK: Least Bell's Vireo and Southwest Willow
21 Flycatcher.

22 MS. FOLEY GANNON: And when will those surveys be
23 completed?

24 DR. MOCK: Well, the Vireo will be done late June,
25 early July, and the Willow Flycatcher potentially -- well,

1 it would be done, probably, by the end of July, I believe.

2 They have specific numbers of survey visits per
3 month and that extends it into July.

4 MS. FOLEY GANNON: Based upon the information
5 that's available about the potential habitat, as well as the
6 survey information that is made available and will be
7 available to the Commission, do you believe it's possible
8 now to anticipate, if there was an impact, if one of these
9 species was found, is it an impact that could be mitigated
10 to a less than significant level?

11 DR. MOCK: Oh, yes. The indirect impact of
12 construction can easily be mitigated through, you know,
13 noise barriers and things like that, or just timing the
14 construction to outside the breeding season of the species.

15 The downstream impact associated with the water
16 diversion, that would have to -- would have to be evaluated
17 in terms of the relative estimate, the relative extent of
18 that change in habitat, assuming it is adverse, and you can
19 mitigate that by creating or enhancing similar habitats in
20 the same water shed.

21 MS. FOLEY GANNON: So, you think there could be a
22 determination made that if there was an impact identified,
23 the specific impacts would be what would occur and that the
24 Seeley Wastewater Treatment Plant, in their approval
25 documents they could and should require mitigation which

1 would be adequate to mitigate to a less than significant
2 level.

3 DR. MOCK: Oh, yes, definitely.

4 MS. FOLEY GANNON: Is that accurate?

5 DR. MOCK: Yes.

6 MS. FOLEY GANNON: In the other biological,
7 potential biological impact associated with the Seeley
8 expansion has been related to the reduction of affluent,
9 which currently runs through, as I understand it, a wetland,
10 before it is discharged into the New River?

11 DR. MOCK: It doesn't run through the wetland, but
12 it outfalls into the wetland, I believe.

13 MS. FOLEY GANNON: And do you know anything about
14 the current status of the evaluation of the potential
15 impacts on that wetland?

16 DR. MOCK: They've installed the various
17 monitoring devices that they needed to install in order to
18 conduct the data collection that's required for the
19 hydrology study.

20 I won't go into the details of that since I'm not
21 really -- that's not my area of expertise.

22 But what was notable, they did note that in order
23 to install one of the devices, a flume type device they
24 called it, they had to shut down the water, the outflow from
25 the treatment plant, and that was shut down for, I think, a

1 two- or three-day period. And they noted that there was
2 still water flowing in the channel, even with the water
3 cutoff during that period, from the flow.

4 And so, they investigated the potential -- they're
5 investigating the potential source of that water flow and
6 they're kind of chasing down a water flow that may be coming
7 from an upstream school site.

8 MS. FOLEY GANNON: And it's my understanding the
9 draft mitigated -- the draft which was prepared for this
10 project, but not adopted, there had been a conclusion that
11 this wetland was supported by also return flow from
12 agriculture; is that your understanding as well?

13 DR. MOCK: That was what that document inferred,
14 yes.

15 MS. FOLEY GANNON: And we would anticipate, again,
16 that the analysis that's being conducted currently will be
17 able to give a factual conclusion about whether this wetland
18 will or will not be impacted by the project?

19 DR. MOCK: Yes, I think the intent of the
20 hydrology study is to basically do a water budget of where
21 are all the sources of the water contributing to the wetland
22 and, presumably, is contributing towards sustaining that
23 wetland in its current condition.

24 MS. FOLEY GANNON: And, again, in your
25 professional judgment, if the answer to that was that this

1 wetland will be affected because it is at least partially
2 dependent upon the effluent, which is discharged and which
3 will be reduced by this project. Would there be mitigation
4 available which could, and that they should enforce to
5 mitigate this to less than a significant level?

6 DR. MOCK: Oh, yes, there's lots of opportunities
7 for mitigating wetlands in the general vicinity of the
8 Seeley Water Treatment Plant.

9 MS. FOLEY GANNON: Thank you. I will now turn to
10 Mr. Moore. I mean, we can do this three ways. I was now
11 going to talk to Mr. Moore about plant's impacts, if the
12 parties would rather do the wildlife species first so
13 somebody else can talk for a while, I'm good with that, or
14 we can go out and do plants.

15 HEARING OFFICER RENAUD: If their testimony is
16 really delineated that way, I think maybe we'll try the
17 animals first, and then we'll go on.

18 MS. FOLEY GANNON: That's fine, yeah.

19 HEARING OFFICER RENAUD: So, let me just check for
20 cross-examination from staff.

21 MS. HOLMES: Staff is going to defer cross-
22 examination of this witness until the Wildlife Agency, the
23 BLM and the Energy Commission have reached a final position
24 on how to address these biological impacts.

25 HEARING OFFICER RENAUD: Now, CURE, you, I know

1 have Scott Cashen prepared to testify today. He's still on
2 the phone, I believe?

3 MS. MILES: Yes. He was having technical
4 difficulties with his phone earlier but, Scott, are you on?

5 HEARING OFFICER RENAUD: Scott Cashen?

6 MR. CASHEN: Yes, yes, I am.

7 HEARING OFFICER RENAUD: All right, good. Is Mr.
8 Cashen's testimony limited to species, to animals, or is it
9 also plants?

10 MS. MILES: Scott Cashen is available for cross-
11 examination.

12 HEARING OFFICER RENAUD: All right.

13 MS. MILES: And so he's available for cross-
14 examination on anything that was in his testimony. However,
15 I would like to point out that it is subject to change based
16 on the revised staff assessment.

17 HEARING OFFICER RENAUD: Right.

18 MS. MILES: And, you know, as we indicated earlier
19 in conversations with you. I did also indicate in a call
20 with you that I'd like to give a brief introduction prior to
21 this testimony because we will not be doing direct
22 examination today and we're going to wait for the staff
23 assessment.

24 HEARING OFFICER RENAUD: That makes sense. All
25 right, good.

1 Now, cross-examination of Mr. Mock, do you --

2 MS. MILES: Right, and we will not be cross-
3 examining Mr. Mock today.

4 HEARING OFFICER RENAUD: Now, if you're planning
5 to about the testimony submitted up to now, today's the day
6 to do it.

7 MS. MILES: Well, we believe that there's still
8 many things that are in flux related to his testimony that's
9 been submitted today. So, we will be --

10 HEARING OFFICER RENAUD: Right. Well, you
11 submitted -- Mr. Cashen submitted written testimony. Mr.
12 Mock submitted written testimony in response to that and if
13 you wish to cross-examine Mr. Mock about his responses, I
14 think today would be an appropriate time. You've had a lot,
15 you've had enough time to familiarize yourself with his
16 comments.

17 MS. MILES: As we stated in our witness and
18 exhibit list, we will be reserving the opportunity to cross-
19 examine once we find out what the staff's assessment is on
20 this and the staff's analysis is based on the agencies.

21 HEARING OFFICER RENAUD: I understand.

22 MS. MILES: And so, we really think that much of
23 his testimony may irrelevant after that and so we don't
24 think that we need to be cross-examining the witness at this
25 point on those topics.

1 MS. FOLEY GANNON: I mean, our understanding is
2 that staff is another party to this. We have put on our
3 affirmative case and this is our case, so if there are
4 questions for our witnesses they are here and happy to
5 answer them.

6 MS. MILES: Thank you. And we will not be
7 submitting cross-examination of Mr. Mock today.

8 MS. HOLMES: Hearing Officer Renaud, I'd just like
9 to point out that the problem that we're facing is that the
10 staff and the agency, since they have not gotten complete
11 information yet, we may be in agreement with everything Dr.
12 Mock says or we may not be. And so I think it's not the
13 best use of time for us to be expected to cross-examine a
14 witness when we have not yet developed a staff position.

15 HEARING OFFICER RENAUD: I'm not expecting you to
16 because you have not developed a staff position.

17 However, CURE's witness has developed a position
18 with respect to Mr. Mock's written testimony. And if you
19 have questions about that exchange of written testimony,
20 now's the time to ask those questions.

21 If Mr. Cashen is on the phone, if you want to get
22 creative in some way and engage him with Mr. Mock about
23 their counter testimony, we'll permit that. And if you'd
24 like a few minutes to get ready for that, the Committee
25 would be happy to offer that because I think it's a good

1 time to take about a ten-minute break.

2 MS. MILES: Well, I just wanted to --

3 HEARING OFFICER RENAUD: You will be permitted to
4 present further evidence on biological resources and further
5 cross-examination after the staff analysis comes out. But
6 with respect to what we have in the record already, we've
7 made it very clear that we want the parties to proceed with
8 respect to that today.

9 All right, so let's take a break. We'll resume at
10 10:45 and you let us know which format you use to use for
11 your questioning, if you wish to involve Mr. Cashen in that
12 and so on. Thank you.

13 (Off the record.)

14 HEARING OFFICER RENAUD: All right, thank you for
15 your attention in keeping our break short.

16 Ms. Miles, you're free to proceed.

17 MS. MILES: So, we have decided -- is this mike
18 on?

19 MS. FOLEY GANNON: It doesn't sound like it.

20 MS. MILES: Hello?

21 MS. FOLEY GANNON: Yeah, that's it.

22 MS. MILES: So, we've decided that we are not
23 going to cross-examine Dr. Mock today. And I understand
24 that it's a big expense to bring witnesses out and that's
25 why we didn't bring our witnesses out today, in person,

1 because we felt that it's a much better use of our resources
2 to bring them out when we have a completed staff analysis.

3 So, we did go a compromise route and decide to
4 allow our witnesses -- or provide our witnesses for cross-
5 examination, if the Applicant wanted to go forward with
6 cross-examination.

7 And the Applicant did indicate that they wanted to
8 cross-examine two of our witnesses and so we have made them
9 available by phone.

10 And so, you know, we feel like we really,
11 earnestly want to participate in this proceeding but we
12 don't feel ready to go forward at this point.

13 And so, but if the Applicant chooses to not bring
14 back Dr. Mock for cross-examination, we will not object.

15 HEARING OFFICER RENAUD: All right, thank you.
16 The Committee first appreciates your having your witnesses
17 available by phone for cross-examination and when we get to
18 that, we'll see if anybody does want to cross-examine them.
19 I imagine there will be some.

20 With respect to the specific issue of CURE cross-
21 examining Dr. Mock with respect to his written comments on
22 your witness's testimony, I suggest you've had that long
23 enough to be familiar with it and if you had questions, you
24 could ask them today. You've apparently chosen not to and
25 so we'll proceed.

1 Let's see, cross-examination by Mr. Budlong?

2 Okay, Mr. Beltran?

3 MR. BELTRAN: Yes. My name's Tom Beltran, I'm
4 with California Native Plant Society.

5 HEARING OFFICER RENAUD: Wait, Mr. Beltran, pull
6 that mike right up and so that the people on the phone can
7 hear you.

8 MR. BELTRAN: I can raise it, too.

9 HEARING OFFICER RENAUD: Yeah, that might help.

10 MR. BELTRAN: I think this will work. My main
11 focus is on the botanical surveys, but you had made some
12 comments about some of the other issues and I'd like to ask
13 you about those.

14 When talking about the Peninsular Big Horn Sheep,
15 you had said that you'd spoken to Daniel Stewart at BLM and
16 that he had not -- that, normally, off-roaders will report
17 these types of incidences or sightings.

18 What other sources of information does BLM El
19 Centro have? Do they have a monitoring program in the area
20 of this site?

21 DR. MOCK: I do not have any details of that, so I
22 can't really testify to that effect. I was relying, what
23 his comments to me was that the BLM's position was that if
24 this was a significant use area for Big Horn Sheep, it would
25 have been identified well before 2009. Because there's so

1 many people out in the general vicinity of that site, the
2 frequency of detection would have been higher if it was a
3 more than casual sighting.

4 MR. BELTRAN: Are you familiar with Big Horn Sheep
5 reactions to off-road vehicles?

6 DR. MOCK: Usually, they're running away so, yes.

7 MR. BELTRAN: I guess you had -- if I understood
8 you properly, you're saying that off-roaders would have
9 reported these --

10 DR. MOCK: No, I said campers and off-roaders.
11 There's camping, an extensive amount of camping going on in
12 that area as well and I think Daniel's specific reference
13 was in terms of the camping recreaters, but who probably are
14 also the off-roaders as well.

15 But the main issue, the main focus of his comment
16 was there's a lot of eyes out there and so detection of
17 these animals in this general vicinity would have been more
18 common, if it was a more common occurrence.

19 MR. BELTRAN: Okay. Back to the number of man
20 hours that you had stated had been put into surveys, it
21 wasn't clear to me how many of the 4,670 hours, if any, were
22 used for botanical and how many for other resources?

23 MR. BELTRAN: 2009 was a really, really bad year
24 for blooming and so the focus of 2009 was about 50/50 in
25 terms of -- 2007, I'm sorry. It was 50/50, with the focus

1 on the Flat-tailed horned lizard, surveys, getting those
2 completed according to protocol and then assessing the
3 floristic resources on site.

4 2008 was primarily botanical. We did some
5 supplemental surveys for Flat-tailed horned lizards, but the
6 bulk of the effort was botanical in 2008.

7 And then in 2010, it was 99 percent botanical.

8 MR. BELTRAN: Okay. At any time during the 2007
9 or 2008 surveys were the surveyors splitting their attention
10 between Flat-tailed horned lizard and botanicals?

11 DR. MOCK: The way we approached it was since we
12 were surveying the plot surveys and the plot surveys are
13 across the entire site, we would have them do the plot
14 survey first, you know, get their plot surveys done during
15 the time conditions that are required for that protocol and
16 then spend the rest of the day doing the botanical search.

17 So, that's how it was broke up. They weren't
18 looking for rare plants at the same time they were looking
19 for Flat-tails. They would do the Flat-tail work and then
20 they would do the botanical work later in the day.

21 MR. BELTRAN: Okay, the same people, the same
22 staff?

23 DR. MOCK: Typically, we have teams of two to four
24 people together.

25 MR. BELTRAN: Okay.

1 DR. MOCK: And during those years we had a mixture
2 of skill sets.

3 MR. BELTRAN: Okay. 2010, we decided or it was
4 decided that another survey would be done because of the
5 rainfall or the lack of rainfall in some of the other survey
6 years.

7 DR. MOCK: Well, that was the concern is, you
8 know, you don't have as much blooming during the dry years
9 compared to above normal years. And so the expectation was
10 that you'd find more blooming plants in wetter years, and so
11 they were concerned that we were missing some species due to
12 those differential rainfall conditions.

13 MR. BELTRAN: But there are other variables
14 besides rainfall; is that correct?

15 DR. MOCK: I'd have to --

16 MS. FOLEY GANNON: If we could hold the questions
17 on the plants until we've had our direct testimony, I think
18 it would be helpful, because Mr. Wood is going to be
19 testifying to the plant surveys.

20 DR. MOCK: Yeah, Mr. Wood can talk about the
21 variation of survey conditions that influence detection.

22 MR. BELTRAN: Okay. That's all.

23 HEARING OFFICER RENAUD: No further questions,
24 thank you. All right, any redirect for Mr. Mock?

25 MS. FOLEY GANNON: I have one point that I'd like

1 to ask you about. An e-mail, I believe, just came in which
2 was giving information about a conversation from the
3 service, and giving an outline of how they anticipate
4 approaching the Seeley issues as part of the consultation
5 for the project.

6 Did you see that e-mail?

7 DR. MOCK: Yes, I did.

8 MS. FOLEY GANNON: And can you describe what the
9 content of that e-mail stated?

10 DR. MOCK: The e-mail was from Richard Knox and he
11 forwarded it, I believe, or he was summarizing a
12 conversation he had with Felicia Sirchia, I think is how you
13 pronounce her name, and she's the Wildlife Service biologist
14 who's taking the lead on the Flat-tailed horned lizard
15 conference.

16 And she was also the person who was wanting the
17 information about the Seeley surveys. And she had expressed
18 that she had talked to the consultant involved with the
19 Seeley work and was satisfied with the surveys to date, and
20 her conclusion was that the Service would render a not-
21 likely-to-adversely-affect decision.

22 MS. FOLEY GANNON: And we don't assume that you're
23 just going to rely upon this e-mail that we just read, but
24 we wanted to update you on what we were hearing about the
25 conversations with the agencies.

1 HEARING OFFICER RENAUD: Do you intend to offer it
2 as an exhibit or enter it into the record in some fashion?
3 Because by printing it out and --

4 MS. FOLEY GANNON: Yeah, we can print it out and
5 offer it. Yes, we can do that. We will print it -- from
6 somebody's computer here we will print it and we can offer
7 it as an exhibit after lunch, if that's acceptable.

8 HEARING OFFICER RENAUD: Okay, that's fine.

9 MS. FOLEY GANNON: There's one other piece which,
10 I'm sorry, I forgot to raise in my initial questions and
11 discussion with you this morning. There's another
12 biological condition which we have asked for a modification
13 on, which is Biological Condition 8.

14 Are you aware of that change and can you present
15 your opinion upon the proposed new language?

16 DR. MOCK: Yeah, Biological Condition 8 is a
17 restriction on the speed of the vehicles traveling on the
18 dirt roads on site. And I think currently it's requesting a
19 15-mile-an-hour speed limit, and which is unusually slow
20 even for a biological condition of this sort.

21 Typically, that constraint is usually limited to a
22 25-mile-an-hour speed limit. Slowing down the vehicles
23 slower than 25 isn't going to give you a substantial benefit
24 to wildlife.

25 MS. FOLEY GANNON: So in terms of impacts to

1 wildlife, you don't anticipate there will be any difference
2 in the impacts associated --

3 DR. MOCK: Correct.

4 MS. FOLEY GANNON: -- with this change.

5 DR. MOCK: Correct.

6 MS. FOLEY GANNON: Okay, with that I would say,
7 unless someone has questions about these last two points
8 that we put in, which I would offer him for redirect on
9 those, otherwise we can submit his testimony.

10 HEARING OFFICER RENAUD: Anybody?

11 MS. MILES: No.

12 HEARING OFFICER RENAUD: Okay. Commissioner --

13 MS. FOLEY GANNON: And we would ask that the
14 exhibits referenced are also accepted into evidence.

15 HEARING OFFICER RENAUD: Yes, 110 -- 110 we didn't
16 have in, and I think 115 and 116 --

17 MS. FOLEY GANNON: 115 and 116 are in, right.

18 HEARING OFFICER RENAUD: Any objection to 110. It
19 will be admitted. All right.

20 COMMISSIONER EGGERT: I just have, I guess, a
21 question related to the estimated populations and I guess
22 this is potentially to staff and Mr. Mock -- or is it Dr.
23 Mock?

24 MS. FOLEY GANNON: Yes, Dr. Mock.

25 COMMISSIONER EGGERT: Your testimony suggested

1 that the BLM estimate of 2,100 was -- let's see, I should
2 have it in front of me here. Yeah, that it was high. I was
3 going to try to use the right words. And I think you gave
4 some reasons why you thought that.

5 And then I note that in the staff assessment it
6 says that our -- based on BLM information that -- and then
7 data collected by the BLM, analyzed by William Kristan from
8 Biological Sciences, at Cal State University, San Marcos,
9 that there could be potentially between two and five
10 thousand, which was also referenced.

11 And I'm just curious if we know why the -- what
12 the reason for the wide range or the discrepancy in the
13 numbers?

14 DR. MOCK: Actually, Dr. Kristan's assessment was
15 done under our contract and, basically, the direction we
16 were given by the BLM was to analyze some of the optimal
17 habitat plot survey data and run it through the software
18 program that generates the density estimates from that data.

19 And so, and they wanted to use those density
20 estimates as a basis for developing that population
21 estimate.

22 And so our concern was taking a density estimate
23 for an optimal habitat and applying it to a site that we
24 feel is sub-optimal, was inappropriate and, hence, the
25 difference of opinion in terms of the numbers.

1 COMMISSIONER EGGERT: So, I guess is it a
2 difference of an opinion or is it just sort of a
3 reassessment of the habitat and whether or not it's optimal?

4 DR. MOCK: Our issue is we did site surveys using
5 the protocol that was provided by the BLM and the Wildlife
6 Agencies, and if the densities were as high as 3,000, or
7 2,100, or whatever thousand numbers of animals, we would
8 have found more animals than we did. And so, the gap is the
9 field, the site specific data is too small to get you to
10 that thousand plus animal estimate.

11 COMMISSIONER EGGERT: And that site specific data
12 was developed subsequent to this estimate?

13 DR. MOCK: No. Prior.

14 COMMISSIONER EGGERT: Okay, so prior to the
15 estimate, okay.

16 And I guess the other question I had was, and I
17 don't know, quite know how to formulate it, but it has to do
18 with the connectivity issue which was raised by staff
19 yesterday as potentially being an outstanding issue. And
20 some of your testimony addressed some of the issues of
21 connectivity.

22 And again, I guess this -- you know, I don't want
23 to put staff on the spot here but do we think that we will
24 have the information that we will need to establish or
25 assess the connectivity issue based on this recent testimony

1 and what information we currently have, or will that require
2 additional?

3 MS. HOLMES: The testimony that Dr. Mock gave
4 about the trestle, and Coyote Wash, and the barrier affect
5 of the freeway are not in dispute. Staff, I don't believe,
6 disagrees with his statement about what the physical
7 characteristics are of the site boundaries.

8 The staff is concerned that these particular site
9 characteristics will result in a reduction in connectivity
10 and we have not yet been able to determine any mitigation
11 that would be feasible, that would ameliorate those
12 connectivity impacts. It's, again, one of those issues
13 that's under discussion between staff and the BLM, and the
14 Service, and to a certain extent the Department of Fish and
15 Game, although as he points out, it's not a State listed
16 species.

17 But we are working on it and we are concerned
18 about connectivity and particularly the fact that we don't
19 seem to be able to find any mitigation measures that could
20 address the connectivity impacts.

21 COMMISSIONER EGGERT: And is the expectation that
22 the information that would be needed to make a determination
23 on those topics would be available in part of the June 27th?

24 MS. HOLMES: There will be a conclusion on this in
25 the June 27th filing.

1 COMMISSIONER EGGERT: Okay, thank you.

2 HEARING OFFICER RENAUD: Thank you. I, actually,
3 would like to ask a question.

4 Do you have any Commissioner Byron?

5 COMMISSIONER BYRON: Go right ahead.

6 HEARING OFFICER RENAUD: All right. The speed
7 limits, I think it might help the Committee understand this
8 a little better, the purpose of a speed limit on the site is
9 what?

10 DR. MOCK: At least from the wildlife perspective?

11 HEARING OFFICER RENAUD: Yes.

12 DR. MOCK: I think the 25-mile-an-hour speed limit
13 was recommended by the Air Quality assessor as being
14 adequate to minimize --

15 HEARING OFFICER RENAUD: For emissions.

16 DR. MOCK: -- dust issues.

17 HEARING OFFICER RENAUD: And dust, all right.

18 DR. MOCK: PM-10 stuff.

19 HEARING OFFICER RENAUD: Right.

20 DR. MOCK: But the speed limit constraint in
21 wildlife sections are usually sufficient speed to where if
22 the driver can see the animal, they can slow down
23 sufficiently so as not to cause a mortality event.

24 HEARING OFFICER RENAUD: What species do you
25 anticipate might be on a roadway within the site?

1 DR. MOCK: Well, the concern, I think, was focused
2 on the Flat-tailed horned lizard. And as you can see from
3 the survey efforts, they're very hard to see just when
4 you're walking on the ground. So, someone driving 15 miles
5 an hour isn't likely to see them more effectively than
6 someone driving 25 miles an hour. So, slowly down a vehicle
7 to avoid road kill of a Flat-tail, I think, wasn't going to
8 give you that kind of a benefit that you would expect with a
9 change.

10 Fifteen miles an hour is very slow and you would,
11 obviously could preclude avoiding wildlife with that. But
12 we don't think the differential between the 25 mile an hour
13 and the 15 mile an hour is sufficient to justify that
14 differential in speed limit.

15 HEARING OFFICER RENAUD: And I guess my -- you're
16 getting to my point, which is why don't you think there's a
17 significant difference?

18 DR. MOCK: The net benefit doesn't justify the
19 change.

20 HEARING OFFICER RENAUD: Is that based on a study
21 that's been done or --

22 DR. MOCK: Just in terms of our best professional
23 judgment of when you detect the animal, you can detect it at
24 25 miles an hour just as easily as 15 and avoid it. You're
25 not going to see a net benefit from keeping it at 15.

1 HEARING OFFICER RENAUD: All right. Okay, thank
2 you, I understand now.

3 COMMISSIONER EGGERT: I wanted to make sure I
4 understood one of your points with respect to the
5 construction schedule. Again, I'm paraphrasing in that you
6 thought that the number of FTHLs that would be encountered
7 during construction would probably be less than a hundred.

8 DR. MOCK: That's the expectation of many of the
9 people involved in the assessment, yes.

10 COMMISSIONER EGGERT: Okay. And then based on
11 that assumption or conclusion that you -- that you wouldn't
12 expect the construction schedule to affect the amount of
13 lizards that you would encounter, is that right, so in other
14 words --

15 DR. MOCK: The condition is to minimize the
16 mortality event and so you're going to be looking for
17 lizards throughout the construction phase, you know.

18 COMMISSIONER EGGERT: But in terms of the quantity
19 that you would encounter, you're suggesting that wouldn't
20 change substantially based on --

21 DR. MOCK: We would encounter them throughout the
22 year, but just more during the spring and summer.

23 COMMISSIONER EGGERT: Okay.

24 HEARING OFFICER RENAUD: Anything further with
25 this witness, anybody?

1 All right, just to give counsel a preview, we'll
2 proceed with Michael Wood. But after that I would like to
3 have CURE offer Scott Cashen for cross-examination, just in
4 case you guys want to get ready for that.

5 MS. FOLEY GANNON: All right, that makes sense.

6 HEARING OFFICER RENAUD: All right. Okay, go
7 ahead, then.

8 You've already been sworn, Mr. Wood or is it Dr.
9 Wood?

10 MR. WOOD: No.

11 HEARING OFFICER RENAUD: All right, thank you.

12 MS. FOLEY GANNON: Dr. Mock, Mr. Wood.

13 Mr. Wood, are you the same Michael Wood who
14 presented testimony earlier in this proceeding, submitted on
15 May 10th and previously accepted on Exhibit 114, is it, or is
16 it 115?

17 HEARING OFFICER RENAUD: The supplement?

18 MS. FOLEY GANNON: The first one, the May 10th,
19 yeah. I'm trying to get it right.

20 MS. HOLMES: We appreciate that.

21 MS. FOLEY GANNON: I think it's 115.

22 MS. HOLMES: Is the rebuttal testimony.

23 HEARING OFFICER RENAUD: Is the rebuttal
24 testimony.

25 MS. FOLEY GANNON: Right, and then the compilation

1 on May 17th, accepted into evidence as Exhibit 116.

2 MR. WOOD: Yes.

3 MS. FOLEY GANNON: You could have answered that
4 for me then.

5 MR. WOOD: Yes.

6 (Laughter.)

7 HEARING OFFICER RENAUD: All right, so this
8 witness was not part of the opening testimony?

9 MS. FOLEY GANNON: He was not part of the opening
10 testimony, that's correct.

11 HEARING OFFICER RENAUD: All right.

12 MS. FOLEY GANNON: Can you please describe,
13 briefly, the survey efforts, the botanical survey efforts
14 that have been conducted on this site this year?

15 MR. WOOD: Yeah, my involvement on this project
16 began in February and we assembled a team of strictly
17 botonists with desert-specific experience to conduct -- to
18 conduct surveys following the protocol developed by CEC
19 staff and BLM.

20 We conducted surveys between February 22nd and
21 March 2nd and again between April 5th and April 13th with, on
22 the ground, anywhere between 10 and 13 botonists working,
23 walking transects a hundred feet apart.

24 All in all, for those two survey periods, we
25 spent 2,370 person hours on the ground.

1 MS. FOLEY GANNON: And how many native plant
2 species did you find on the site?

3 MR. WOOD: We documented, at the end of those two
4 survey periods, 133 native species of plants.

5 MS. FOLEY GANNON: And to put that into context,
6 133 species, is that what you said?

7 MR. WOOD: Yes.

8 MS. FOLEY GANNON: On 6,500 acres?

9 MR. WOOD: Actually, about 8,000, because we
10 surveyed, also, the water line and the transmission line.

11 MS. FOLEY GANNON: And so, to put it in context,
12 would that be comparable for most sites in the area or can
13 you give references for other areas where you are aware of
14 the relative abundance of native plant species that are
15 found in some other desert habitat in the area?

16 MR. WOOD: Well, again, all of us who have lots of
17 experience working in Sonora and Mojave Desert, we had a
18 sense when we were on the ground that there wasn't a great
19 diversity of native species on the site. There certainly
20 was lots of fun, there was lots of great stuff to find.

21 But I can give you a -- you know, that's what we
22 do, that's what we do.

23 I can give you, actually, a couple of interesting
24 kind of comparisons. Again, the IVS site, which is 6,400
25 acres and on that 6,400 acres we found about -- we found 133

1 native types of plants.

2 The T-line, which is on the other side of the
3 highway and in the Yuha Basin is less disturbed habitat, you
4 know, there's no off-road vehicle activity happening there,
5 on that site we found 69 native species, which represents 52
6 percent of the total number that we found on the entire
7 site, but we found that in 7.5 percent of the area. I don't
8 know if that gives you any sort of a context, a much smaller
9 area, a fairly large number of plants.

10 I was doing some surveys at the same time, also,
11 up near Salton City, again, I just throw this out as sort of
12 a comparison, 220 acres, we recorded 93 species of native
13 plants in an area representing 3.4 percent of the actual
14 study area of the IVS site.

15 So, that's 70 percent of the number of species
16 detected.

17 MS. FOLEY GANNON: So, you would describe this as
18 a site which does not have a abundance of native plant
19 species?

20 MR. WOOD: Well, I guess I wouldn't use that term
21 exactly, but it definitely has an indication of having been
22 subjected to historical and current disturbance.

23 MS. FOLEY GANNON: And what was the nature of the
24 disturbance, were you able to see it while you were on the
25 site?

1 MR. WOOD: Well, one of the things that we found
2 really interesting and we were all kind of wondering what
3 was going on out there, is there's a lot of scraped ground.
4 I think I had heard from a second or third hand, I don't
5 know if I should even say, but that the site had been
6 scraped for some sort of mineral mining or extraction
7 activity. But there's pretty large swathes of ground out
8 there that, you know, you can see that they've really just
9 been scraped. And I don't know what the explanation for
10 that is.

11 Of course, there is -- there are active
12 racecourses on the property and marked BLM roads. And, of
13 course, there's always some illegal off-road driving going
14 on, on the site.

15 MS. FOLEY GANNON: And in terms of the year, can
16 you describe it, it was an above-average rainfall year?

17 MR. WOOD: Yeah, I just looked at, real quickly,
18 at some rainfall data and it looked like it was about 118
19 percent of normal for the Imperial Valley.

20 MS. FOLEY GANNON: I'm sorry, it was 118 percent?

21 MR. WOOD: Hundred and eighteen percent of normal,
22 so 18 percent above normal. It seemed overall to be a
23 pretty good year for wildflowers in the desert this year.

24 A colleague of mine, who works with Mojave ground
25 squirrel, who's been working for 22 years in the Mojave, he

1 found something like a hundred ground squirrels in an area
2 he'd never seen such concentration.

3 So, anecdotal information, but we felt that it was
4 a pretty good year to be out doing plant surveys.

5 MS. FOLEY GANNON: And the surveys that were
6 conducted, there's been a number of discussions in some of
7 the testimony that's been submitted by Intervenor and some
8 of the discussion in the staff assessment about the range of
9 species that were identified on the target list. Can you
10 describe what role the target list of species plays in your
11 surveys?

12 MR. WOOD: Well, of course, the target list is put
13 together to determine or to come up with an idea of what
14 seasons you need to be out looking, be out on the ground.
15 Of course, the protocols stipulate that surveys must be
16 conducted during -- to maximize the potential of finding the
17 species that you're looking for.

18 And so, you do have to generate a target species
19 list for that.

20 The ultimate test, though, of the quality of any
21 botanical survey is really the species inventory that's
22 generated at the end. So, even if there are taxa that some
23 people might think should be on the inventory list or on the
24 list, the target species list, you can certainly cross-
25 reference with the ultimate species inventory to put

1 together to see if, indeed, there's anything on there that
2 should be -- that is sequel worthy.

3 MS. FOLEY GANNON: So, that means that those who
4 don't have the pleasure that you do, of doing many, many,
5 2,000 hours looking on a site for plant species, so the
6 survey's that you're not just identifying if the target list
7 is there, but you're identifying the species that you see;
8 is that correct?

9 MR. WOOD: Yeah, a survey has to be floristic in
10 nature, which means you identify everything, basically, to
11 the lowest taxonomic entity.

12 MS. FOLEY GANNON: So, and if there are species
13 that there are a question about, if there's something that
14 may be in the particular -- it's not blooming, yet, and
15 maybe you can't identify it, would you note that?

16 MR. WOOD: Oh, certainly, yeah. And, you know,
17 like everyone that's out in the field, you're always
18 collecting things. If you can't identify it in the field
19 right then and there, you take it back to the hotel room and
20 break out the dissecting scope and work it through. And
21 anything that you think might be questionable, we take a GPS
22 point of it in case we needed to go back and count
23 individuals or that sort of thing.

24 So, we had lots of great working sessions every
25 night, pulling out all of our plants and comparing notes.

1 MS. FOLEY GANNON: It does sound fun.

2 MR. WOOD: Come along next time.

3 MS. FOLEY GANNON: So, were there species that you
4 were not able to identify at the end of these surveys, the
5 spring surveys that have been completed?

6 MR. WOOD: No, we didn't -- we didn't have any
7 ambiguities in our identifications and we feel our -- the
8 inventory that we've put together so far, for these two
9 seasons, is complete.

10 MS. FOLEY GANNON: There's been discussion,
11 yesterday, about cryptobiotic soils on the site. I
12 understand that was not the intent of your survey, but while
13 you were out there walking it, and the other botonists were
14 out there walking it, did you have any observance of
15 cryptobiotic soils on the site?

16 MR. WOOD: Yeah, we saw some evidence of with
17 probably a gelatinous lichens, very few scattered mosses.
18 There's no doubt some crusts out there.

19 A general consensus among the people on the ground
20 was we weren't seeing very much of it, which would be
21 consistent with this scraping and surface disturbances that
22 have been ongoing and historical out there.

23 MS. FOLEY GANNON: Would you -- and do you have
24 experience in identifying these soils and seeing them in the
25 past?

1 MR. WOOD: My experience is limited. I did do --
2 in my graduate research I worked with cryptogammic crust,
3 which actually ended up being a very important contributor
4 to the conclusions I made in my graduate research. This was
5 In the Sierra foothills and it involved lichens, lichens
6 growing on mineral soils.

7 MS. FOLEY GANNON: So, again, your conclusion, or
8 yours, you and the other botonists that were in the field,
9 was that you thought it was present, but it was not
10 abundant; is that accurate?

11 MR. WOOD: That was our impression, yeah.

12 MS. FOLEY GANNON: Okay. Now, turning to the
13 mitigation which is being offered for the plant species,
14 first off, in the results of the plant species did you find
15 any federally or state listed plant species on the site?

16 MR. WOOD: No, we did not.

17 MS. FOLEY GANNON: And what was the rarest or the
18 special status species that you did find and what were the
19 number?

20 MR. WOOD: We found three species that are CEQA
21 significant, I guess, in the CNPS list two, Harwoods Milk-
22 vetch, Ground Turbans, and Wiggins' Croton we found. I
23 think the numbers were something like 35 individuals of
24 Harwood's Milk-vetch. We found ten individuals of Brown
25 Turbans. And a conservative estimate of seven --

1 HEARING OFFICER RENAUD: All right, if you're done
2 with your answer? Okay. You just listed a number of plant
3 species and the court reporter's asked, for the clarity of
4 the record, if you could spell the ones that aren't obvious,
5 if you remember the ones you just rattled off.

6 MR. WOOD: The list of plants?

7 HEARING OFFICER RENAUD: Yes.

8 MR. WOOD: Okay. Harwood's, H-a-r-w-o-o-d-'-s,
9 Milk-vetch, v-e-t-c-h.

10 Brown Turbans, T-u-r-b-a-n-s.

11 And the last one is Wiggins' -- oh.

12 MS. FOLEY GANNON: Well, you can just say it
13 again, if you want.

14 MR. WOOD: Wiggins', W-i-g-g-i-n-s, Croton, C-r-o-
15 t-o-n.

16 THE REPORTER: Thank you.

17 HEARING OFFICER RENAUD: Thank you very much.

18 MR. WOOD: Sorry about that.

19 HEARING OFFICER RENAUD: Thank you, Counsel, for
20 the list with the names, too. All right, proceed.

21 MS. FOLEY GANNON: So, for CNPS species list two,
22 what does that designation mean?

23 MR. WOOD: Those are species that are considered
24 rare in California, but common elsewhere.

25 MS. FOLEY GANNON: And do you know anything -- I'm

1 sorry, there was there three species, right, list two
2 species?

3 MR. WOOD: Yeah, they're all -- or, yeah, they're
4 all CNPS list two. Wiggins' Croton, though, is also state
5 listed rare.

6 MS. FOLEY GANNON: And are these species found
7 throughout this area? Do you know anything about sort of
8 their local abundance or their abundance regionally?

9 MR. WOOD: Yeah, I mean, I have some notes. I
10 don't know how much detail you wanted to get into. Wiggins'
11 Croton is known mostly from the eastern part of the county,
12 it was a surprise to find it out where we did find it.

13 The Harwood's Milk-vetch is scattered throughout
14 Imperial County and into other counties northward, and
15 Arizona.

16 And Brown Turbans is known west of the site, more
17 in -- or, let's see, Painted Gorge is the nearest population
18 close to the site, about five miles away.

19 MS. FOLEY GANNON: Are you aware of the mitigation
20 that's being proposed to mitigate for impacts to these
21 species?

22 MR. WOOD: Yes, I am.

23 MS. FOLEY GANNON: And can you comment, briefly,
24 upon the overall mitigation approach, as well as its
25 adequacy?

1 MR. WOOD: These are all -- well, first of all,
2 the Wiggins' Croton, my understanding, it will not be
3 impacted. What we found were basically first- or second-
4 year seedlings growing along Evan Hughes Highway. And my
5 understanding is that they will be avoided, so there's no
6 mitigation proposed for unavoidable impacts of that species.

7 The Harwood's Milk-vetch and the Brown Turbans, we
8 found actually a kind of a cluster of those in the
9 southwestern portion of the site and I believe what the
10 conclusion was, was that the mitigation will be offered
11 based on an aerial extent, not numbers. And that is that we
12 would imagine a certain area surrounding the habitat
13 supporting that cluster of plants, and then the goal would
14 be to find occupied habitat elsewhere and acquire that land
15 at a two-to-one ratio. Again, that's two to one based on
16 area.

17 MS. FOLEY GANNON: And in your view, would
18 preserving occupied habitat at a two-to-one ratio, off-site,
19 for CPNS list two species be adequate to offset the impact?

20 MR. WOOD: Yes, I believe so.

21 MS. FOLEY GANNON: And yesterday there was a
22 discussion about the potential development of, I think it
23 was, an unanticipated --

24 MS. HOLMES: Discovery?

25 MS. FOLEY GANNON: Discovery, that was it, an

1 unanticipated discovery. So, as I understand it, the
2 mitigation as it's currently provided in the draft staff
3 assessment, or the conditions as they're currently provided,
4 would require that for listed species, state or federally
5 listed species there would be avoidance with a buffer.

6 MR. WOOD: Uh-hum.

7 MS. FOLEY GANNON: And that for, then, special
8 status species, like the CNPS 2 species, there would be this
9 mitigation which we discussed, which would be a two-to-one
10 preservation off-site for occupied habitat.

11 Do you think that those measures would be adequate
12 in offsetting, if there is an unanticipated discovery of
13 another special status species on this site?

14 MR. WOOD: Yes, I believe so.

15 MS. FOLEY GANNON: And related to that, the
16 Applicant has requested a change to the proposed Condition
17 19, are you aware of that change?

18 MR. WOOD: Yes, I am.

19 MS. FOLEY GANNON: And maybe if we can just review
20 this, there was, I think, a little bit of confusion when we
21 were talking about this change yesterday. Can you describe
22 what is being proposed in the changed language?

23 MR. WOOD: Well, there's an annual plant that
24 would not have been recognizable during the spring surveys,
25 it's a CNPA List 2 species. It's called Abram's Spurge.

1 And so, we would be looking for that, as well as anything
2 new that might come along.

3 It's an annual species that flowers only in the
4 late summer, early fall, and that would be what we would be
5 looking for.

6 MS. FOLEY GANNON: And as I understand it, the
7 Applicant is proposing that the condition would provide that
8 these surveys need to be completed before construction could
9 commence, but that the Commission's decision could come and
10 would not have to await the results of these survey efforts,
11 with the anticipation that the mitigation, if these were
12 found, would follow the measures we had just discussed.

13 In your professional opinion, would those
14 mitigation measures, again, be sufficient to offset if this
15 species is found during these pre-construction surveys?

16 MR. WOOD: Yes, I believe so.

17 MS. FOLEY GANNON: And just in terms of timing,
18 when can these surveys be conducted for these fall species
19 that you anticipate could be on the site?

20 MR. WOOD: September.

21 MS. FOLEY GANNON: And how long would these
22 surveys take to complete?

23 MR. WOOD: I think about ten days, that's what it
24 takes. It's been taking a crew of about 13 to cover the
25 entire IVS site.

1 MS. FOLEY GANNON: Excellent, thank you. I will
2 submit him for cross.

3 HEARING OFFICER RENAUD: All right, cross-
4 examination by staff.

5 MS. HOLMES: Staff reserves the right to cross-
6 examine this witness later.

7 HEARING OFFICER RENAUD: Thank you. CURE?

8 MS. MILES: Similarly, we reserve the right to
9 cross if the witness appears.

10 HEARING OFFICER RENAUD: Thank you. Again, we
11 have the same situation where this witness has submitted
12 written response to Mr. Cashen's opening testimony and,
13 again, the Committee would appreciate cross-examination of
14 that, now, but we'll address it the same way we addressed it
15 previously.

16 MS. MILES: I'd like to also point out that this
17 witness has responded to the staff assessment, which also is
18 considered draft, just as we consider our testimony draft at
19 this point, so I think there's a very clear parallel.

20 HEARING OFFICER RENAUD: We understand your
21 position, thank you.

22 Cross examination by Mr. Budlong.

23 MR. SILVER: We also reserve a right to cross-
24 examine at some future point.

25 HEARING OFFICER RENAUD: Well, you did not reserve

1 the right to cross-examine at all in this topic, so I'm
2 questioning the validity of that. But it's on the record
3 and so noted, thank you.

4 Mr. Beltran?

5 MR. BELTRAN: Yes, I do.

6 HEARING OFFICER RENAUD: Please proceed, thank
7 you.

8 MR. BELTRAN: Mr. Wood, I missed the exact number
9 of man hours that were spent in the spring surveys, it was
10 2,700, approximately?

11 MR. WOOD: It was 2,370.

12 MR. BELTRAN: You had mentioned that there were
13 large swathes of scraped ground?

14 MR. WOOD: Uh-huh.

15 MR. BELTRAN: Did you estimate how much or what
16 percentage of the site is in this condition?

17 MR. WOOD: I would say it's mostly in the central
18 part of the property. I would have to say, I mean, any
19 percentage right now I would be very much guessing.

20 MR. BELTRAN: You said large swathes.

21 MR. WOOD: Well, when you stand in the middle of a
22 hundred or two-hundred acre piece of ground and you're
23 looking at an extensive area that appears to have been
24 flattened one way or another, it seems large when you're
25 standing there on the ground.

1 MR. BELTRAN: Can you estimate in acres, or square
2 feet or area?

3 MR. WOOD: I cannot.

4 MR. BELTRAN: Okay. You talk about racecourses
5 that are on the property.

6 MR. WOOD: Yes.

7 MR. BELTRAN: Describe what you mean by
8 racecourse?

9 MR. WOOD: It's a posted racecourse for off-road
10 vehicles.

11 MR. BELTRAN: Okay.

12 MR. WOOD: Pointing at a map, I could kind of show
13 you where it is.

14 MR. BELTRAN: It's not the location, I'm not
15 interested in the location.

16 MR. WOOD: All right. There's a course that
17 extends from the -- what they do is they come across from
18 the OHV park to the north and it's a track that runs north
19 to south, goes a little to the west, and then from south to
20 north and back. That's one of main racecourses.

21 There's also a historic racecourse -- well, I
22 think they're not supposed to use it anymore, but we
23 definitely saw them out there racing on it. That goes from
24 that center north/south line and extends to the western end
25 of the property.

1 In addition, there are numerous BLM-signed off-
2 road roads that cross the property and the dunebuggys and
3 folks are often out there as well.

4 MR. BELTRAN: Where's the illegal off-road
5 activity taking place? When you were out there, I think you
6 said that you saw illegal off-roading activity on the site?

7 MR. WOOD: Evidence with tire marks.

8 MR. BELTRAN: And what location was that in, in
9 terms of was it on desert pavement, was in the washes, was
10 it creosote scrub?

11 MR. WOOD: Yes, the site is posted that there's no
12 off-road vehicle use allowed outside of established BLM
13 roads. But as you're walking across both desert -- all of
14 the washes have tire tracks in them and certainly the desert
15 pavement as well. You see lots of older, as well as fresher
16 tire tracks.

17 MR. BELTRAN: Okay. A hundred and 18 percent
18 normal rainfall, was that 118 percent year to date?

19 MR. WOOD: Correct.

20 MR. BELTRAN: Okay. So, if it --

21 MR. WOOD: As of May 10th.

22 MR. BELTRAN: Did you calculate if it doesn't rain
23 anymore from the season, and I'm assuming that you're going
24 from July to June, or something like that, when you're
25 saying the season, if it does not rain anymore this time of

1 the year -- I mean, I know that January was pretty heavy, it
2 was a couple inches and the area only gets three inches a
3 year on average.

4 MR. WOOD: Uh-hum.

5 MR. BELTRAN: If it doesn't rain anymore the rest
6 of the rainfall season, will it still be 118 percent, did
7 you calculate that?

8 MR. WOOD: All I did was I looked at the total,
9 the total mean rainfall and then the total rainfall to date.

10 MR. BELTRAN: Do you remember what the total
11 rainfall in inches was that represents the 118 percent?

12 MR. WOOD: I think that's in my rebuttal. Shall I
13 look for it?

14 MR. BELTRAN: No, it's not -- that's not
15 necessary. You say that the ultimate goal is to inventory
16 plants there and yet there's a target species list, and you
17 had said that the reason that you create that list is to
18 determine the correct time of the year to look for those
19 species.

20 What about where do you develop that list from,
21 where does that come from?

22 MR. WOOD: Well, I wasn't part of the preparation
23 of the original target species list, but I can answer the
24 question in terms of how it's normally done.

25 MR. BELTRAN: If you would?

1 MR. WOOD: Sure. All right. Well, generally, you
2 start with a nine quad search of available databases, which
3 would be the Natural Diversity Database and the CNPS
4 inventory of rare species of California, so that would be
5 the first place that you would start.

6 And what that means is you find the quad in which
7 your site occurs and then you search the eight surrounding
8 quads and generate a list of all species that have all --
9 special status species that have been recorded from those
10 quads.

11 Now, understanding that there is an inherent lack
12 of information, sometimes, in certain areas, then you often
13 broaden the number of quads that you're looking at.

14 For example, in San Diego, Coastal San Diego, or
15 the Bay Area, where I'm from, things are fairly well
16 documented and so we might rely on what's known from those
17 nine quads.

18 In areas that are less well documented, we might
19 actually look at a list for an entire county and then go
20 through that list and say, all right, well, here's a plant
21 that only occurs at 5,000 feet in rocky habitat. Well, we
22 can probably rule that one out.

23 So, we might -- then we start to winnow the list
24 down and that would be how we would assemble our --
25 basically, our hit list, our target list.

1 MR. BELTRAN: But you did not assemble this list?

2 MR. WOOD: Correct.

3 MR. BELTRAN: Who did?

4 MR. WOOD: I believe that was prepared by URS.

5 MR. BELTRAN: Okay, and they're the ones who did

6 the 2007-2008 surveys?

7 MR. WOOD: Yes.

8 MR. BELTRAN: Why didn't they do it this time?

9 MR. WOOD: I cannot answer that. Oh, why didn't

10 we do it this time?

11 MR. BELTRAN: No, why didn't URS do it this time?

12 Why did you guys do it and not URS?

13 MR. WOOD: We did the surveys.

14 DR. MOCK: We developed lists year, as well.

15 MR. WOOD: Yeah, they developed a revised list

16 based on input from BLM and CEC.

17 MR. BELTRAN: Okay. You had mentioned that there

18 were some species that you found -- well, let me back up.

19 Did you consider looking for cryptantha ganderi?

20 MR. WOOD: I think that was on one of our hit

21 lists.

22 MR. BELTRAN: Okay.

23 MS. FOLEY GANNON: You might want to spell that

24 for the court reporter.

25 MR. WOOD: C-r-y-p-t-h-a-n -- well, let me write

1 it down. C-r-y-p-t-a-n-t-h-a g-a-n-d-e-r-i.

2 MR. BELTRAN: You know, the databases that you
3 used, and you'd touched on the subject that they're not very
4 well -- that the area's not very well documented. How does
5 this affect -- well, on the listed species are there special
6 instructions that are given to people to concentrate for
7 those species that are on the listed species list?

8 MR. WOOD: The truth of the matter is once we hit
9 the ground it just becomes an Easter egg hunt and we're
10 writing down, collecting and identifying every single plant
11 we find.

12 MR. BELTRAN: Okay. What kinds of conditions,
13 other than rainfall, would affect what you would find on the
14 ground? Temperature? I'm talking about variables and let
15 me -- you may not have heard any of the previous testimony,
16 yesterday, but the gentleman who did the testimony on the
17 noise for this project talked about developing a model and
18 he predicted that the noise would be -- their model
19 predicted that the noise would be within one decibel of what
20 it actually was.

21 Mr. Chang talked about models for sediment
22 transport.

23 In the documentation that I've researched, there's
24 a lot of models for predicting air pollution from wind
25 erosion.

1 Is there a similar model in your line of work that
2 would predict the time of the year, giving independent
3 variables, temperature, humidity temperature -- or, excuse
4 me, humidity, temperature, things along that line that would
5 affect the timing for these species?

6 CHIEF COUNSEL ROSENTHAL: I'm not aware of that,
7 nor do I know has anybody ever done that in the industry.

8 MR. BELTRAN: So, there's no substitute for
9 eyeballs in the field?

10 MR. WOOD: Well, the best approach, of course, is
11 to go to referenced population and actually find and lay
12 your eyes on some of the things that you're looking for.

13 MR. BELTRAN: Explain reference populations?

14 MR. WOOD: Well, by searching the database you
15 find locations of some of the target plants or as many of
16 the target plants as you can and actually drive to them,
17 find them in the field, key them out and say, ah, I've got a
18 good mental image of what that is.

19 And, also, the state of its phrenology, of its
20 growth form at the time, is it in flower, is it in fruit,
21 how well is it doing right now.

22 MR. BELTRAN: I guess, you know, I'm relying on my
23 own experience and, you know, I can think of two different
24 plots that might be a couple miles apart, the same type of
25 habitat, one year you'll have a species that appears, the

1 next year very little of it.

2 I guess what I'm trying to get at is what causes
3 that kind of variability, other than rain?

4 MR. WOOD: It's usually -- for annuals, it would
5 be localized rain pattern. I mean, I have experience doing
6 lots of fire with -- in fire ecology. So, obviously, fire
7 has a tremendous effect on what appears in a post-fire
8 environment.

9 I've witnessed interesting flushes of plants after
10 scraping, mechanical scraping. Certainly, landslides opens
11 up ground in different ways, where you might find things in
12 a site that have not been seen previously.

13 So, I mean, our State is wonderfully diverse in
14 terms of soil chemistry, geology, micro-climate, habitats,
15 typography, rainfall. That's what kind of makes it very
16 exciting for us to work here. But it's always a challenge,
17 yes.

18 MR. BELTRAN: You'd said that if there's a
19 scarcity of information in the database that you might
20 include an entire county. Why not include the entire
21 Colorado Basin, would that be a better source to develop a
22 list?

23 MR. WOOD: Perhaps. I believe that the approach
24 that's been taken is a very, very standard approach for
25 conducting these types of surveys, though.

1 A person can go farther and farther and farther,
2 it's true. But that's why we do a floristic study, that's
3 why we provide a complete inventory, so if anyone has
4 information about a species of local concern or local
5 rarity, you can look at the inventory and cross-check it,
6 cross-reference it.

7 MR. BELTRAN: Back to the cryptobiotic soils. You
8 didn't do any quantitative analysis on that?

9 MR. WOOD: I did not.

10 MR. BELTRAN: Okay. That's all I have, thank you.

11 HEARING OFFICER RENAUD: Thank you. Any redirect?

12 MS. FOLEY GANNON: Just one question. So, based
13 on your experience, do you feel like the surveys that were
14 conducted on the site adequately portray the species that
15 were in existence on the site this year?

16 MR. WOOD: I do.

17 MS. FOLEY GANNON: Thank you.

18 HEARING OFFICER RENAUD: Commissioners, any
19 questions?

20 COMMISSIONER BYRON: No.

21 HEARING OFFICER RENAUD: I have a question. And,
22 actually, it's for Dr. Mock, in light of something that --

23 DR. MOCK: I thought I was done.

24 HEARING OFFICER RENAUD: -- something that Mr.
25 Wood said.

1 He described the off-road or off-highway vehicle
2 use on the site, describing existence of one or more
3 racecourses, the marked roads and evidence of travel off the
4 marked roads.

5 With respect to animals, have you considered the
6 impact of those vehicle uses on the suitability of the site
7 as habitat?

8 DR. MOCK: Well, certainly, when you're driving in
9 a wash you're disturbing the soil conditions and the
10 conditions for ant resources, and so in those areas where
11 there's frequent and chronic disturbance due to the road
12 travel -- well, vehicle use, you would expect probably less
13 food resources for at least the lizard. And that might be a
14 source of why we're not finding so many of the one species.

15 But the concern with the lizard is that we
16 consider the entire site suitable for the lizard and it's
17 just a matter of the density doesn't appear to be as large
18 or as high as pristine, relatively pristine habitat. And,
19 certainly, the off-road vehicle activity is considered,
20 probably, a source of why that density is probably lower.

21 HEARING OFFICER RENAUD: All right, so the density
22 wouldn't increase, you expect, unless the vehicle use were
23 curtailed?

24 DR. MOCK: If the vehicle use were curtailed to
25 the effect that to allow more ant resources to persist, yes.

1 HEARING OFFICER RENAUD: All right. With respect
2 to other than affecting the food supply, for instance the
3 noise or just the presence of humans in the vehicles, do
4 those have any impact on the -- say, the perception of
5 species that this is or is not a good place to stay?

6 DR. MOCK: Oh, let me emphasize, our original
7 assessment of the site is it's going to be turned into an
8 industrial site and only human tolerant species are the most
9 likely component that would be retained on site.

10 So, species that are more sensitive to human
11 activity, human presence or disturbance, ongoing
12 disturbance, would probably be displaced from the site.

13 HEARING OFFICER RENAUD: By the project?

14 DR. MOCK: Yes.

15 HEARING OFFICER RENAUD: All right, would the same
16 statement be true of them being displaced by the vehicular
17 use that has been and continues to take place?

18 DR. MOCK: Yeah, in the scale of the animal, yes.
19 So, the lizards, their home range is only an acre or so, and
20 so if it's -- if the racecourse areas are associated with
21 that home range of that lizard, yes, they would be affected.
22 But there might be some patches of habitat off the
23 racecourses that would still support animals with small
24 spatial requirements.

25 HEARING OFFICER RENAUD: Would the sheep be

1 affected or decide to stay away from there because of the
2 vehicular use?

3 DR. MOCK: That's our expectation, yes.

4 HEARING OFFICER RENAUD: All right, thank you.

5 Okay, good, thank you.

6 MS. FOLEY GANNON: We'd submit the testimony.

7 HEARING OFFICER RENAUD: Very good. CURE has made
8 available or is making available Mr. Cashen for cross-
9 examination. Mr. Cashen has submitted testimony in writing,
10 which is in the record. And I'll -- is he available at this
11 time?

12 MS. MILES: Mr. Cashen is available, I believe.
13 Scott, are you on the phone?

14 MS. CASHEN: Yes.

15 MS. MILES: Okay. And we haven't actually moved
16 to submit his testimony into the record, that I'm aware of.
17 So, did you just say that his testimony is in the record?

18 HEARING OFFICER RENAUD: What I mean, it's in the
19 documentary evidence and it's been docketed.

20 MS. MILES: Okay.

21 HEARING OFFICER RENAUD: And I presume you will
22 want to move it into evidence?

23 MS. MILES: Yes, yes, I will, in just a moment.

24 HEARING OFFICER RENAUD: Okay, and are you making
25 that motion at this point?

1 MS. MILES: I was going to after I finished my
2 short introduction.

3 HEARING OFFICER RENAUD: Fine, very good. So, you
4 do your introduction and then we'll proceed with cross.

5 MS. MILES: Okay, thank you.

6 HEARING OFFICER RENAUD: Thank you very much.

7 MS. MILES: CURE's expert witness for impacts to
8 biological resources is Scott Cashen. CURE does have an
9 additional witness regarding impacts to biological
10 resources, specifically focused on Peninsular Big Horn
11 Sheep, and that is Dr. Renblake, and the Applicant stated
12 that they did not intend to cross-examine him at this
13 evidentiary hearing, and that is why he is not being made
14 available today.

15 Mr. Cashen's testimony describes the project's
16 impacts to a large body or protected special status species
17 and we have not completed our testimony at this time because
18 we are waiting to be able to have the opportunity to review
19 biological surveys that have not been completed, some of
20 them have not been completed.

21 And, for example, we discussed the results of some
22 of the biological surveys, although the reports have not
23 been submitted to the staff or for the parties for rare
24 plants, specifically.

25 And we are looking to -- we are very, very much

1 looking forward to review the Flat-tailed horned lizard
2 translocation plan that also has not been submitted, yet, to
3 staff or other parties.

4 And the staff has not released its completed
5 assessment of -- on thing is the BLM's mitigation proposal
6 for Flat-tailed horned lizard, but also a number of other
7 biological resources.

8 So, at this point, the staff assessment did not
9 and could not conclude whether having the Applicant provide
10 funding as mitigation to BLM for Flat-tailed horned lizard
11 would mitigate the impacts to a level that's less than
12 significant.

13 HEARING OFFICER RENAUD: Ms. Miles?

14 MS. MILES: Yes.

15 HEARING OFFICER RENAUD: Pardon me for
16 interrupting you, but I think that we all understand that
17 cross-examination is limited to testimony that has been put
18 into the record.

19 MS. MILES: Okay.

20 HEARING OFFICER RENAUD: And we have that in
21 writing.

22 MS. MILES: Okay.

23 HEARING OFFICER RENAUD: So, you don't have to
24 tell us what's not there because we wouldn't allow questions
25 on that.

1 MS. MILES: CURE reserves the right to submit
2 additional testimony at a future hearing on biological
3 resource impacts, as I've mentioned.

4 So, now, I'd like to introduce Scott Cashen. I
5 suppose you'd like to swear him in at this point?

6 HEARING OFFICER RENAUD: Yes, please.

7 MS. MILES: And he is in California, in Walnut
8 Creek.

9 THE REPORTER: Mr. Cashen?

10 MS. CASHEN: Yes.

11 THE REPORTER: Can you tell me where you're
12 located?

13 MS. CASHEN: Walnut Creek, California.

14 THE REPORTER: Okay, thank you very much. I want
15 to swear you in, could you please stand and raise your right
16 hand?

17 MS. CASHEN: Okay.

18 Whereupon,

19 SCOTT CASHEN
20 was called as a witness herein and, having been first duly
21 sworn, was examined and testified as follows:

22 THE REPORTER: Would you please state your full
23 name for the record and spell it for me, please?

24 DR. MOCK: Scott Cashen, S-c-o-t-t C-a-s-h-e-n.

25 THE REPORTER: Thank you very much.

1 MS. MILES: So, Scott, who's -- what testimony are
2 you sponsoring today?

3 MS. CASHEN: My own.

4 MS. MILES: And would that be your opening with
5 exhibits, as well as your oral testimony and the exhibits
6 submitted on that?

7 MS. CASHEN: Yes.

8 MS. MILES: And do you have any changes to your
9 sworn testimony at this time?

10 MS. CASHEN: No.

11 MS. MILES: And are the opinions in the testimony
12 your own?

13 MS. CASHEN: Yes.

14 MS. MILES: So, at this time CURE moves to enter
15 into the record Exhibits 429 through 476, and 498-A through
16 498-P.

17 MS. HOLMES: B?

18 MS. MILES: P as in Paul.

19 HEARING OFFICER RENAUD: All right, thank you. Is
20 there any objection by any party to admittance of those
21 exhibits into the record?

22 MS. FOLEY GANNON: No objection.

23 MS. HOLMES: No objection.

24 HEARING OFFICER RENAUD: They will be admitted,
25 thank you.

1 MS. MILES: Mr. Cashen, please summarize your
2 qualifications, education and professional experience?

3 MS. CASHEN: I have a Master's of Science degree
4 in wildlife and fishery science from Penn State University
5 and I have 18 years of professional experience in the fields
6 of wildlife biology, forestry and natural resources.

7 Over the past three years I've been involved in
8 the environmental review of 12 large-scale solar energy
9 facilities being proposed for California.

10 And in addition to that, I have held a two-year
11 contract with California State Parks to conduct surveys for
12 Peninsular Big Horn Sheep near Anza-Borrego Desert State
13 Park.

14 I currently operate my own consulting business.
15 And prior to starting my own business, I worked as a senior
16 biologist for two consulting firms, and prior to that I had
17 positions with the National Park Services, Point Reyes Bird
18 Observatory and the University of California.

19 MS. MILES: Thank you. Please describe for us
20 what it was that CURE asked you to do in this proceeding?

21 DR. MOCK: CURE asked me to conduct an independent
22 evaluation of the biological resources impacts associated
23 with the Imperial Valley Solar Project.

24 MS. MILES: Can you talk just very briefly about
25 the methodology for your work?

1 DR. MOCK: Yes, I reviewed the staff assessment,
2 and the application for certification and all the
3 supplements that accompanied that, as well as other relevant
4 documents that have been docketed in this proceeding.

5 MS. MILES: And would you like to provide a short
6 summary of the findings of your investigation?

7 MS. CASHEN: Sure. Well, Flat-tailed horned
8 lizard is obviously one of the focal species in this case.
9 And according to the staff assessment, the project would
10 impact 2,000 to 5,000 Flat-tailed horned lizards and
11 directly impact over 6,000 acres of their habitat. And
12 that's a lot of lizards and it's a lot of habitat for a
13 species that is currently being proposed for listing under
14 the Endangered Species Act.

15 I also concluded that there would be a potentially
16 large amount of indirect impacts associated with the project
17 and that those could be even larger than the direct impacts.
18 Studies have shown that Flat-tailed horned lizards disappear
19 from areas adjacent to human development, and those indirect
20 impacts have not been mitigated by the project.

21 And then, also, with respect to Flat-tailed horned
22 lizard, the Flat-tailed horned lizard range management
23 strategy, which is the inter-agency document designed to
24 prevent the further decline of the species, relies on a set
25 of five management areas as the backbone of its conservation

1 strategy. And the project lies directly between two of
2 these management areas, the Yuha Desert management area and
3 the West Mesa management area. And maintaining habitat
4 activity between those two management areas has been
5 identified as very important to the future conservation of
6 the species.

7 And there's been no mitigation proposed to
8 maintain that connectivity and I believe that the project is
9 going to -- would result in almost completely isolating the
10 Yuha Desert management area from the West Mesa and other
11 areas north of Interstate 8, where Flat-tailed horned
12 lizards currently occur. And I believe that there would
13 likely be some very serious consequences to the conservation
14 of the species as a result of that.

15 And in this case, although Flat-tailed horned
16 lizard is the focal species, it serves as a surrogate for
17 many other species that occur in the area and I believe
18 there would be serious consequences to those other species,
19 as well.

20 With respect to special status plants, I cannot
21 evaluate the project's impacts to special status plants at
22 this time due to incomplete survey data.

23 However, the Applicant has recently provided
24 testimony that indicates several special status species are
25 present on the site, including one that is listed as rare by

1 the State of California, as well as two CNPS, or California
2 Plant Society lists two species and two CNPS list four
3 species.

4 And I've examined the known occurrence data for
5 those species and based on those data, the occurrences on
6 the project site represent the periphery -- are at the
7 periphery of the range of several species, which is very
8 important in the future conservation of maintaining those
9 peripheral populations and is especially important in
10 maintaining conservation for the species.

11 And it's my professional opinion that the project
12 would result in significant unmitigated impacts to those
13 special status species as a result of not having a reliable
14 conservation strategy or mitigation plan in place.

15 And, finally, I believe that the project would
16 initiate and propagate land degradation throughout the
17 entire region as a result of sediment transfer and
18 redeposition. And when viewed in the context of the major
19 habitat fragmentation and various types of anthropogenic
20 disturbance that would be associated with the project, I
21 believe the project's indirect, direct and cumulative
22 impacts would significantly undermine the biological
23 integrity of the entire watershed.

24 MS. MILES: Thank you. Thank you, Mr. Cashen.

25 Mr. Cashen is now available for cross-examination.

1 HEARING OFFICER RENAUD: Thank you. Applicant?

2 MS. FOLEY GANNON: Good afternoon, Mr. Cashen, a
3 few questions for you. First off, with regards to the Flat-
4 tailed horned lizard and the connectivity, it is our
5 understanding that there is a culvert which lies to the west
6 of the site, which would remain unimpacted by the proposed
7 project. What is your view, does that provide any
8 connectivity between the management areas that you have
9 referenced?

10 MS. CASHEN: I'm sorry, I couldn't hear the latter
11 part of your question.

12 MS. FOLEY GANNON: I'm sorry. Is that better?
13 Can you hear me now?

14 HEARING OFFICER RENAUD: We're going to move the
15 phone closer.

16 MS. FOLEY GANNON: And so very rarely do people
17 say they can't hear me that I'm a little stunned. But I
18 will really use my outdoor voice. Is that okay?

19 DR. MOCK: Yes.

20 MS. FOLEY GANNON: Okay. I was talking about with
21 regard to the Flat-tailed horned lizard and connectivity.
22 It is our understanding, from examining maps of the site,
23 that there is a culvert, which is a larger culvert or a
24 boxed culvert to the west of the project site, which will
25 not be impacted by the proposed project.

1 Do you view that as providing any connectivity
2 between the management areas that you just referenced?

3 MS. CASHEN: I have -- sorry, getting some
4 feedback here. Am I coming across at your end or can you
5 hear me okay?

6 MS. FOLEY GANNON: We can hear you.

7 MS. CASHEN: Okay, I'll just fight my way through
8 it. I have not specifically analyzed that culvert that you
9 referenced. And as a matter of fact, I believe that
10 rebuttal testimony was the first time that culvert, serving
11 as a potential for connectivity, was even mentioned.

12 However, in examining the cumulative impact map
13 that was provided in the staff assessment, it did appear
14 that that culvert would be impacted by the proposed or
15 anticipated project. So, the cumulative impact scenario is
16 complete isolation.

17 MS. FOLEY GANNON: But you agree that it doesn't
18 look like it's being impacted by the proposed project, is
19 that correct, recognizing that you haven't studied this
20 particular culvert?

21 MS. CASHEN: I have not pulled out maps. That
22 culvert was not identified, specifically, as far as I know,
23 and there were never any data provided to specify why that
24 culvert was there as a movement corridor and, therefore, I
25 cannot evaluate.

1 MS. FOLEY GANNON: I understand. Okay, but you
2 have evaluated the other specific culverts that were
3 discussed, particularly going under Highway 8 -- Interstate
4 8? Have you examined those? I'm sorry, go ahead, have you
5 examined those culverts?

6 MS. CASHEN: My examination has been limited to
7 what has been provided by the Applicant.

8 MS. FOLEY GANNON: Okay, understand. Have you
9 visited the site?

10 MS. CASHEN: I have seen the site, yes. And I
11 have also had a crew of my employees visit the site.

12 MS. FOLEY GANNON: About, approximately, how much
13 time did you spend on the site?

14 MS. CASHEN: Excuse me?

15 MS. FOLEY GANNON: Approximately how much time
16 would you say you've spent on the site?

17 MS. CASHEN: Not very much.

18 MS. FOLEY GANNON: Okay. With regard to the
19 special status plant species, I understand that you haven't
20 reviewed the surveys and we can discuss that. But in your
21 rebuttal testimony or your opening testimony, I can't -- I
22 forget which area you referenced it, you talked about the
23 fact that you felt that on-site avoidance for many of these
24 species would not be appropriate mitigation.

25 So, do you feel that off-site mitigation, mainly

1 preserving occupied habitat for the identified species would
2 be the appropriate mitigation?

3 MS. CASHEN: I'm not sure that that would be
4 appropriate, either. And I think that being able to
5 accurately evaluate what will be appropriate mitigation
6 would require knowledge of the species that are present,
7 their abundance, and their distribution throughout the site.
8 And as of current, we do not have that information.

9 MS. FOLEY GANNON: Well, but assuming that
10 information is available, I'm just asking as a general
11 approach to mitigation, assuming that we have CNPS Species 2
12 that may be impacted by a project, again, I understood from
13 your testimony that you thought preservings or small islands
14 of these species would not be really viable.

15 And so I'm just asking, and understand that you
16 may not know exactly what is on the site but, in general,
17 would preservation of off-site, intact habitat, occupied
18 habitat be a preferred mitigation measure?

19 MS. CASHEN: I think it is dependent on the
20 species for which the mitigation is intended.

21 MS. FOLEY GANNON: Okay. And you referenced in
22 your opening testimony here, this morning, that you had
23 reviewed the occurrence data, I think it was for the area of
24 the region. What was the source of that data?

25 MS. CASHEN: The data that I reviewed is the data

1 that is available in the California Natural Diversity
2 Database, as well as the Consortium of California
3 Herbarians.

4 MS. FOLEY GANNON: And would you be surprised if
5 the survey results from this site, which had not prior to
6 this project been extensively surveyed, if there were
7 special status species found as a result of these surveys,
8 that were not reflected in that database, would that be a
9 surprising occurrence to you?

10 MS. CASHEN: Is the question would I be surprised
11 if the surveys that are being conducted resulted in
12 detecting species that were not present in the database, is
13 that what you're asking?

14 MS. FOLEY GANNON: That's correct, yes.

15 MS. CASHEN: I would not be surprised, no.

16 MS. FOLEY GANNON: So, would you anticipate that
17 there would be other properties in the region, that have not
18 been subject to large-scale surveys, that some of these
19 properties also likely have special status species that are
20 not in the databases that you have evaluated?

21 MS. CASHEN: I think that that is possible, but I
22 do not think that we can make the assumption that just
23 because there are lands in the area that have not been
24 surveyed, that we can assume that species of interest occur
25 on those lands.

1 MS. FOLEY GANNON: No, I understand that you
2 couldn't assume it for a particular site. What I'm saying
3 is -- or asking you is would it be surprising if some of
4 these other areas that have not been subject to surveys,
5 that they were also -- they had special status species
6 present on them?

7 In other words, is there something specifically
8 unique about this site that made that seem like a much more
9 likely occurrence than other sites?

10 MS. CASHEN: I think it depends on the species and
11 I think there are certain species for which I would answer
12 that question yes, and others I would answer it no.

13 MS. FOLEY GANNON: Because I understood from your
14 testimony that you were anticipating, you assumed that there
15 was a potential or maybe even a high potential for species,
16 which had not been previously found on the site, to be found
17 as a part of appropriately conducted surveys.

18 Was that part of your testimony or earlier
19 conclusions?

20 MS. CASHEN: Yes.

21 MS. FOLEY GANNON: And so what I'm just asking is,
22 is there something unique about this site that makes it more
23 likely that that would result that we would find special
24 status species here, that had not been previously
25 documented, in contrast to other areas where these surveys

1 had not been conducted?

2 MS. CASHEN: I would be hesitant to make any sort
3 of judgment on that without knowledge of what the other
4 sites in question are like.

5 To try answer your question, I think if there were
6 other sites that had experienced -- that were of similar
7 soil types, similar climate, similar past disturbance
8 histories, and ownership, and management within the area,
9 that had not been surveyed, then there could be -- there
10 would be nothing, you know, particularly special about the
11 project site in contrast to, say, other BLM land that is
12 almost exactly identical in view of all of the other
13 variables that dictate plant occurrence.

14 If there was another site, you know, immediately
15 north, I'd say as a general statement that that would be
16 possible that rare plants or special status plants would be
17 found there as well.

18 MS. FOLEY GANNON: Okay. I have no further
19 questions, thank you for your answers, Mr. Cashen.

20 HEARING OFFICER RENAUD: Cross-examination by --
21 well, let's see, redirect, first, with respect to that
22 cross?

23 MS. MILES: I just have one question. Scott, can
24 you hear me, this is Loulena?

25 MS. CASHEN: Yes.

1 MS. MILES: Have you seen any proposal from the
2 Applicant for specific mitigation lands that where they
3 would be offsetting impacts or mitigating impacts for the
4 project?

5 MS. CASHEN: No, I have not.

6 MS. MILES: Thank you, no further questions.

7 HEARING OFFICER RENAUD: Cross by -- I think I
8 asked staff already; right?

9 MS. HOLMES: You didn't, but we don't have any
10 questions.

11 HEARING OFFICER RENAUD: Okay, thank you.

12 Mr. Budlong? All right.

13 Mr. Beltran? No.

14 All right, that's it.

15 Commissioners, any questions?

16 HEARING OFFICER RENAUD: All right, in your
17 testimony -- this is Hearing Advisor Raoul Renaud, Mr.
18 Cashen, can you hear me all right?

19 MS. CASHEN: Yes, I can.

20 HEARING OFFICER RENAUD: All right, good. In your
21 testimony you stated that the staff assessment states that
22 there are 2,000 to 5,000 FTHL. I take it, then, your
23 testimony is that you agree with that or are you just
24 observing that that's what the SA says?

25 MS. CASHEN: I have not -- you know, I did not

1 participate in the survey and so I cannot -- I don't feel
2 comfortable making a population estimate.

3 I do believe that the Applicant surveys were
4 flawed and I do believe that the sources of information that
5 were cited in the staff assessment are very reputable,
6 including reference to Tyler Grant, who has quite a bit
7 experience estimating Flat-tailed horned lizard populations.

8 And so I would put more reliability in the
9 estimate that was provided in the staff assessments, than
10 what has been provided by the Applicant.

11 HEARING OFFICER RENAUD: I understand. Thank you.
12 Redirect?

13 MS. MILES: No.

14 HEARING OFFICER RENAUD: All right. Mr. Cashen,
15 thank you.

16 COMMISSIONER BYRON: Yes, thank all of our
17 witnesses.

18 HEARING OFFICER RENAUD: Thank you, witness, you
19 may go.

20 Now, who do we -- we have further --

21 MS. FOLEY GANNON: We do have further testimony.

22 HEARING OFFICER RENAUD: All right.

23 MS. FOLEY GANNON: We would like to call up, for
24 our water testimony -- not Michael Moore.

25 HEARING OFFICER RENAUD: You know, we're sort of

1 thinking that it might be a good time for lunch. Is there
2 anything else on biological, any of the other topics that
3 we've done this morning from anybody, presenting testimony,
4 witnesses?

5 MS. FOLEY GANNON: And in terms of if you have
6 other people that you were planning on -- I understand you
7 do have a soils and water person that you wanted to have on
8 the phone, as well?

9 MS. MILES: I said that I would make him
10 available, if you wanted to cross-examine or if any party
11 wanted to cross-examine him.

12 MS. FOLEY GANNON: And just then, so you know,
13 that will be the next -- that will be the next panel that we
14 call immediately after lunch.

15 MS. MILES: And Raoul -- Hearing Officer, would
16 you mind indicating to us when that might be, so that I can
17 give him a heads up, since he's going to be calling in?

18 HEARING OFFICER RENAUD: All right. I take it he
19 would want to listen to the direct examination of the
20 Applicant's witnesses, so it would be right after the lunch
21 break, which I think we can predict would be 1:15.

22 MS. MILES: Okay, great.

23 HEARING OFFICER RENAUD: All right. And just so I
24 can get a sense of what's coming, Mr. Budlong, you've
25 indicated Edie Harmon as a witness on the topic of soil and

1 water resources. Will you be presenting her today?

2 MR. BUDLONG: Yeah.

3 HEARING OFFICER RENAUD: All right.

4 MR. SILVER: Excuse me, Ms. Harmon is being called
5 only for a limited purpose to introduce a document into the
6 record pertaining to water resources, and that will be the
7 extent of her testimony today. We're reserving her comments
8 with regard, generally, to hydrological issues as they
9 pertain to this groundwater basin.

10 HEARING OFFICER RENAUD: Well, we'll -- I'm not
11 sure I quite understand your statement, Counsel, but Mr.
12 Budlong did indicate he had Edie Harmon as a witness and it
13 sounds like you're going to present her for some purpose,
14 and let's leave it at that.

15 MR. SILVER: That's correct. It relates to the
16 permit for this project, as to the well that's in question.

17 HEARING OFFICER RENAUD: I'm sure that will be
18 very interesting.

19 Okay, so let's take a break for lunch and we'll be
20 back at 1:15.

21 MS. FOLEY GANNON: All right, thank you.

22 (Thereupon, the lunch recess was taken.

23 --oOo--

24

25

1 AFTERNOON SESSION

2 HEARING OFFICER RENAUD: All right, thank you.

3 Are we ready to go?

4 All right, where were we?

5 MS. FOLEY GANNON: I think we were going to call
6 Matt Moore and Bob Scott.

7 HEARING OFFICER RENAUD: Very good, ready to swear
8 the witnesses?

9 THE REPORTER: Please raise your right hand.
10 Whereupon,

11 ROBERT K. SCOTT
12 was called as a witness herein and, having been first duly
13 sworn, was examined and testified as follows:

14 THE REPORTER: Thank you. Would you please have a
15 seat and state your name for the record, and also spell your
16 name?

17 MR. SCOTT: All right. Robert K. Scott, S-c-o-t-
18 t.

19 Whereupon,

20 MATTHEW MOORE
21 was called as a witness herein and, having been first duly
22 sworn, was examined and testified as follows:

23 THE REPORTER: Would you please state your full
24 name for the record and spell it for me?

25 MR. MOORE: Matthew Moore, M-a-t-t-h-e-w, and

1 Moore, M-o-o-r-e.

2 THE REPORTER: Thank you.

3 MS. FOLEY GANNON: No relation to Michael Moore,
4 right?

5 THE REPORTER: No, I do have a brother named
6 Michael Moore, though, so I am related to a Michael Moore.

7 MS. FOLEY GANNON: You can all see the sense, the
8 source of my confusion earlier.

9 So, Mr. Moore, are you the same person who
10 provided earlier in this proceedings, which is now entered
11 into the record or is now provided as Exhibit 106, as well
12 as testimony provided on May 10th, which is now Exhibit 115,
13 and May 17th, which is now Exhibit 116?

14 MR. MOORE: Yes, I am.

15 MS. FOLEY GANNON: So, I'd first like to talk to
16 you about the impacts associated with the water supply and
17 if you can first off, briefly describe the water supply that
18 the water supply will be relying on?

19 MR. MOORE: The project supply that the project
20 will be relying on is the Seeley County Wastewater Treatment
21 facility, located approximately 12 miles from the site. The
22 Wastewater Treatment facility currently serves the Town of
23 Seeley and is under permit through the Regional Water
24 Quality Control Board, with associated waste discharge
25 requirements.

1 The permitted capacity of the plant is 250,000
2 gallons per day. Currently, the plant discharges
3 approximately 110 to 150 thousand gallons per day.

4 The discharge is to what's called the Wildcat
5 Drain, it's a small drainage channel, feeder channel to the
6 New River.

7 Currently, that flow constitutes approximately
8 one-tenth of a percent of the flow in the New River, as well
9 as less than -- well, approximately .03 percent of the flow
10 to the Salton Sea.

11 MS. FOLEY GANNON: So, the water that would be
12 utilized by the project would be treated water from the
13 Seeley project?

14 MR. MOORE: Correct. Correct. The project would
15 intend to build a water line from Seeley to the project,
16 using tertiary treated water, Title 22 water for
17 construction and operation of the plant.

18 MS. FOLEY GANNON: And as the plant is currently
19 in operation, does it provide Title 22 water?

20 MR. MOORE: No, it does not. Currently, it
21 discharges secondary treat effluent.

22 MS. FOLEY GANNON: And do you -- based on your
23 knowledge of that plant, are there additional reasons why
24 this upgrade project would be undertaken, apart from
25 supplying water to the project?

1 MR. MOORE: Yes, over the last several years the
2 treatment plant did receive notices of violation from the
3 Regional Water Quality Control Board, directing them to
4 provide enhanced treatment for that discharge.

5 MS. FOLEY GANNON: And so you were saying a moment
6 ago that the amount of discharge that is currently utilized
7 or effluent that is treated by the project is -- by the
8 Seeley Plant is, what was the number again, please?

9 MR. MOORE: It currently is discharging
10 approximately 110 to 150 thousand gallons per day, but it's
11 permitted for up to 250,000 gallons per day.

12 MS. FOLEY GANNON: A hundred and ten to a hundred
13 and fifty. And do you have information on how many gallons
14 per day will the project require during the lifetime of the
15 project, during operation?

16 MR. MOORE: During operations, that's 33 acre feet
17 per year, or approximately 30,000 gallons per day.

18 MS. FOLEY GANNON: Thirty thousand gallons per
19 day. So, approximately, during operation you would be
20 anticipating that this would be taking, you know, one-fourth
21 to one-fifth of the amount of effluent that would be treated
22 at current levels?

23 MR. MOORE: Correct.

24 MS. FOLEY GANNON: And you said that the plant is
25 actually permitted to treat up to?

1 MR. MOORE: Up to 250,000 gallons per day.

2 MS. FOLEY GANNON: Up to 250,000 gallons per day.

3 And we understand that they are doing an analysis of the
4 impacts, the potential impacts associated with this upgrade
5 project. Do you know if there is a study being done
6 regarding potential impacts downstream from the diversion of
7 this water?

8 MR. MOORE: Yes, the environmental impact report
9 being prepared for the Seeley Wastewater Treatment facility
10 upgrades is providing hydrologic analysis, both surface
11 water and groundwater analysis to establish sources of water
12 discharge into the channel that is immediately downstream of
13 the facility, the Wastewater Treatment facility. And those
14 studies are meant to analyze, like I said, different sources
15 of water, if there are other sources of water besides just
16 the Wastewater Treatment plant that's contributing water
17 downstream.

18 MS. FOLEY GANNON: And again, based on the
19 analysis that you have seen to date, you were providing
20 numbers about the percentage of input that you believe that
21 the treated water from this plant provides to both the New
22 River and to the Salton Sea. Can you provide those numbers
23 again?

24 MR. MOORE: Certainly. With the current outflow
25 from the Seeley Wastewater Treatment facility is

1 approximately .1 percent of the flow within the New River,
2 at that location.

3 The flows established for the New River come from
4 documentation from the Regional Water Quality Control Board
5 for the New River.

6 The reduction in flow or, let's say, the amount of
7 flow tributary to the Salton Sea, from the plant, is
8 approximately .03 percent of the total flows reaching the
9 Salton Sea from the New River.

10 MS. FOLEY GANNON: And again, the plant would --
11 the Imperial Valley Solar project would be utilizing, you
12 know, a third or a fourth of that water?

13 MR. MOORE: Yeah, it would be a fraction of that
14 water. Any water not utilized by the Imperial Valley Solar
15 project would be -- you know, that's up to the Seeley
16 Wastewater Treatment facility about what they plan to use
17 that water for, either discharge or whatever purpose they
18 saw fit.

19 MS. FOLEY GANNON: And based upon this
20 information, can you make any conclusions about the
21 potential impact to the downriver water river sources as a
22 result of diversion of this amount of water for the
23 operation of the project?

24 MR. MOORE: Sure. In my estimation it's a very
25 small amount of water that is being reduced to the New River

1 and the Salton Sea, with these percentages that I've coded
2 here. They're insignificant in my opinion.

3 MS. FOLEY GANNON: Thank you. You've also
4 provided testimony on soil and erosion from the site and
5 related to the project. Can you just provide us a brief
6 summary on the analysis that you've done on these issues?

7 MR. MOORE: Sure. As part of the application for
8 certification and subsequent preparation of the draft
9 drainage, erosion and sediment control plan for the project,
10 which was, I believe, dated June 2009, I prepared soil
11 erosion calculations for the site, utilizing the mapped
12 soils on the site for both existing, during construction,
13 and post-construction scenarios, with and without best
14 management practices included, so that we could analyze,
15 with best management practices included, what the results of
16 project implementation would have on soil erosion rates.

17 The model used is a recognized NRCS, Natural
18 Resources Conservation Service, Revised Universal Soil Loss
19 Equation 2, which uses site-specific inputs for the project.

20 I looked at what the resulting soil loss would be
21 for these existing, and construction, post-construction
22 projects in terms of soil loss in tons per acre per year, as
23 the comparison.

24 MS. FOLEY GANNON: And were you able to make
25 conclusions about the impact associated with the project?

1 MR. MOORE: Certainly, with proper implementation
2 of soil and erosion control BMPs on the site, both during
3 construction and after construction, that the project would
4 be able to mitigate soil loss to a less than significant
5 impact.

6 And keep in mind, too, that any BMPs will be
7 outlined in a final drainage, erosion and sediment control
8 plan, as well as a construction and industrial storm water
9 pollution prevention plan in accordance with California
10 State Water Resources Control Board regulations.

11 MS. FOLEY GANNON: Thank you.

12 Now, turning to you, Mr. Scott, in the period of
13 time before the Seeley water becomes available does the
14 project have a reliable water source?

15 MR. SCOTT: Yes, the project proposes to use the
16 Boyer well, just south of Ocotillo, just south of I-8, on a
17 temporary basis.

18 MS. FOLEY GANNON: And based on your understanding
19 is this well currently in operation and selling its
20 authorized supply?

21 MR. SCOTT: Well, actually, based on historical
22 information and documentation, the well was probably
23 installed sometime in the 1950s and it's been used since
24 that time as a water supply throughout the region.

25 MS. FOLEY GANNON: And do you have any information

1 about what this water has been used for in the recent past?

2 MR. SCOTT: In the recent past it's used primarily
3 for construction and dust control, according to some
4 information provided by the owner of the well. And he has
5 used it as a personal water supply for his residence.

6 MS. FOLEY GANNON: And based upon the current or
7 established usage as well as the proposed usage, would you
8 anticipate there would be any change in the existing
9 conditions of the aquifer or the likely conditions if the
10 project was not utilizing this source of water?

11 MR. SCOTT: Not at all. I mean, the owner of the
12 well currently sells water to people on an as-needed basis.
13 And whether Tessera, the Applicant, is using the water or
14 other people are using the water, I would see that there's
15 no difference.

16 MS. FOLEY GANNON: And I understand, despite this
17 conclusion, that you undertook some analysis to study what
18 the localized affect would be or the direct impacts would be
19 of pumping this well at the rates that would be necessary to
20 serve the project?

21 MR. SCOTT: That's right. We wanted to be able to
22 confirm that it was going to be a reliable source for the
23 temporary basis that the Applicant would need the water.

24 And what we did was a constant rate aquifer test.
25 We had some limitations with respect to we wanted to be able

1 to comply with the conditional use permit for the well and
2 pump the water within the daily limits, which are 41,755
3 gallons.

4 And we also wanted to be able to store the water
5 during the testing.

6 So, we ran an eight-hour constant rate test and we
7 wanted to make sure that we could stress the aquifer, and we
8 pumped it at 150 gallons a minute, so that we could get an
9 idea of what the aquifer characteristics are and then, also,
10 what the zone of influence would be at pumping it at the
11 rate of the conditional use permit, which is roughly 29
12 gallons a minute.

13 MS. FOLEY GANNON: And did you make any
14 conclusions based upon the --

15 MR. SCOTT: Yes, we actually looked -- we looked
16 at a time of one year and then we also looked at two and
17 three years, just to get an idea of what the zone of
18 influence would be. And this would be, you know, the
19 entrainment of water and how far you could move the
20 particles.

21 And we found that in one year the zone of
22 influence was 85 feet from the well, pumping at the 29-
23 gallon-a-minute -- at a 25-gallon-a-minute rate.

24 And in two years it was 120 feet, and in three
25 years it was 140 feet.

1 And so, and the nearest well is approximately 500
2 feet away. So, you know, based on our analysis, there was
3 no significant impact projected for other wells in the
4 basin.

5 MS. FOLEY GANNON: Now, I understand from
6 reviewing, briefly, your data, this is a rather large
7 aquifer. Can you give us an estimate about the amount of
8 water it contains currently and its size?

9 MR. SCOTT: Well, it has been reported that the
10 storage in the aquifer is as much as 1.2 million acre feet.

11 MS. FOLEY GANNON: And the project, again, is
12 proposing to use, as limited by the county, how much water
13 annually?

14 MR. SCOTT: Forty acre feet a year. Yeah, 40 acre
15 feet a year.

16 MS. FOLEY GANNON: And so, in your professional
17 view, would utilizing 40 acre feet a year from this aquifer
18 have a significant impact on this aquifer, particularly if
19 the water's used for a short-term basis?

20 MR. SCOTT: Obviously not if the water's
21 already -- could be used by other -- other parties that
22 could be buying the water from Mr. Boyer.

23 MS. FOLEY GANNON: Although you've determined a
24 proffer that there would be no significant impact, if the
25 Applicant were to propose to offset any potential use of the

1 water from the aquifer by, say, offering to offset it by,
2 you know, acre foot by acre foot. So, say that the
3 Applicant utilized 40 acre feet in one year, then to buy the
4 rights and to not have 40 acre feet withdrawn from the well
5 in the future, would that be a mitigation or an offset that
6 you think would be affected?

7 MR. MOORE: Yeah, I think it would be very
8 reasonable.

9 MS. FOLEY GANNON: And is that something that you
10 have seen done in other instances?

11 MR. SCOTT: Yeah, it's been done for other sorts
12 of energy related projects.

13 MS. FOLEY GANNON: Very good. That is our direct
14 testimony, we will offer both these witnesses for cross-
15 examination.

16 HEARING OFFICER RENAUD: Thank you. Let's start
17 with staff.

18 MS. HOLMES: Staff is going to withhold cross-
19 examination until we've had a chance to analyze all of the
20 subjects that have been raised.

21 HEARING OFFICER RENAUD: All right, CURE?

22 MS. MILES: We have the same position?

23 HEARING OFFICER RENAUD: All right. Budlong?

24 MR. SILVER: Yes, and Mr. Budlong has the same
25 position, to reserve on cross-examination.

1 However, I would like to do some cross-
2 examination, limited only to the purported validity of the
3 existing CUP. Both Mr. Scott and Mr. Moore have made
4 representations that the Boyer well operations under an
5 existing CUP and I would like to ask some questions
6 concerning that, but reserving our rights with regard to all
7 of the other issues relating to the impacts that the Boyer
8 well would have on the aquifer.

9 Obviously, a threshold question, that's very
10 important here, is whether or not there's under any claim of
11 right for the Boyer well to be pumping.

12 HEARING OFFICER RENAUD: I have no concerns with
13 your asking those questions, but I do want to point out that
14 Mr. Budlong reserved 60 minutes for cross-examination of
15 these witnesses here, today, and I'd like to see that
16 happen.

17 MR. SILVER: Well, that's correct, but that wasn't
18 meant to imply -- in any event, we reserve the right
19 further, for the same reasons as the State, as the Energy
20 Commission staff, to review, to ask questions further.

21 All these materials relating to the Boyer well
22 came up only in the supplemental submission. And also, many
23 of the conclusions of Mr. Scott are set forth with regard to
24 the testing in his rebuttal testimony and so we have not had
25 adequate to prepare on it.

1 HEARING OFFICER RENAUD: Please proceed, then.

2 MS. FOLEY GANNON: And just for the record, as
3 stated earlier with when CURE and the staff have reserved
4 the rights, we -- our intent was to provide our witnesses
5 here, today, and our understanding is that the information
6 that has been provided should be crossed now.

7 HEARING OFFICER RENAUD: And the Committee agrees
8 completely. We understand, however, that CURE and Mr.
9 Budlong are not going to proceed with that cross-examination
10 today and we'll leave it at that.

11 But you have indicated some questioning and I'd
12 like you to proceed. And I do ask that you use a
13 microphone. Thank you.

14 MR. SILVER: So, Mr. Scott, in your testimony you
15 reference the Boyer well, 16S9E36G4 as operating under an
16 existing CUP and is permitted for the extraction of water.

17 How do you -- what information do you have that
18 leads you to believe that there is an existing CUP?

19 MR. SCOTT: Well, in Exhibit 32, in one of our
20 appendices, there are the specific requirements with respect
21 to groundwater well registration that sets the terms for the
22 use of the well. It provides the APN, the State well number
23 that you have mentioned, and the address of the well, with
24 the requirements for the permit.

25 MR. SILVER: I see. And is it your estimation,

1 then, or your opinion, or have you been advised that those
2 conditions with regard to well registration are tantamount
3 to or equal to a CUP?

4 MS. FOLEY GANNON: If I can offer, Mr. Scott is
5 not a land use person, so I think he is using the term as
6 referring to conditions which dictate the way that the well
7 is used, whether it is included in what is technically
8 referred to as a CUP, or if it is a condition to a license,
9 I think he is speaking to its practical affect on the well.

10 I'm sorry, I just -- I don't think that he is a
11 land use expert. You can answer the question, but I just
12 wanted to clarify that.

13 MR. SILVER: Well, I think it's a fair point and
14 it was raised yesterday that there's no document entitled a
15 CUP in the record. And it would seem to me that at some
16 point some witness or counsel for the Applicant need to
17 point, for the record, as to where there's a land use
18 authorization for this well.

19 MS. FOLEY GANNON: Again, I can --

20 MR. SILVER: In the form of a CUP. And I'd like
21 to preface that question by pointing out that there is an
22 exhibit in Appendix D, Groundwater Evaluation Report, that
23 URS submitted in connection with a supplemental application.
24 It's not serially paginated, but there is a letter dated
25 July 23rd, 2004, to Mr. Jurg Heuberger, from the Brannons --

1 Brammers, excuse me, who were at that time the owners or had
2 an interest in the well.

3 That letter mentions conditional use permit 10273,
4 which is not apparent in the record.

5 MS. FOLEY GANNON: If we can clarify, we can also
6 offer an exhibit. What number are we up to now, 118?

7 HEARING OFFICER RENAUD: Applicants I think would
8 be, yes, 118. 118, yes.

9 MS. FOLEY GANNON: Okay, we have an exhibit here,
10 118. Do you want to pass these out?

11 And what this is, is a letter from the Imperial
12 County Planning and Development Service which is
13 transmitting the State license. And you are correct that it
14 is not a CUP because, as it states in the specific terms, a
15 CUP could not be issued under the county's ordinance because
16 this was an existing and grandfathered use.

17 However, the county exercised its authority to put
18 conditions on the State license. So, again, when the term
19 was being used here, it was talking to the impact of this
20 authority that has been granted by the county, and which
21 does have conditions, which limit things such as the amount
22 of water that can be extracted, as well as the timing.

23 So, this will, hopefully, help clarify the current
24 state. And we apologize for any confusion that resulted
25 from the inaccurate use of that term. That was our mistake.

1 MR. SILVER: Mr. Scott, did you have any
2 responsibility for or did you have occasion to review the
3 July 23rd, 2004 letter from the Brammers, in connection --
4 written to Mr. Hueberger of the Planning Department?

5 MR. SCOTT: Yes, I did.

6 MR. SILVER: And you reviewed that letter. Did
7 you have occasion to review the response to that letter,
8 which was sent and which is not in the record?

9 MR. SCOTT: No, I have not seen it.

10 MR. SILVER: Did you have occasion, in terms of
11 doing due diligence for this project, to inquire of the
12 Department whether or not there was a reply to that letter?

13 MR. SCOTT: I hadn't made any request to that
14 nature.

15 MR. SILVER: And so, was it your decision to
16 insert this letter into the record, the letter dated July
17 23rd, 2004?

18 MR. SCOTT: Yes.

19 MR. SILVER: And for what purpose?

20 MR. SCOTT: To provide an indication of water use
21 that had occurred prior to the Brammers' ownership of the
22 property or during.

23 MR. SILVER: I see.

24 MR. SCOTT: Yeah.

25 MR. SILVER: Okay. I have no further questions at

1 this time.

2 HEARING OFFICER RENAUD: Counsel, you have implied
3 or I have inferred that there is a response to the letter,
4 that's not in the record. Do you have that --

5 MR. SILVER: Yes, there is and --

6 HEARING OFFICER RENAUD: Do you have that letter?

7 MR. SILVER: I do.

8 HEARING OFFICER RENAUD: Would you care to offer
9 it into evidence?

10 MR. SILVER: Well, I was going to have Mrs.
11 Harmon, in her limited testimony, put that letter into
12 evidence.

13 HEARING OFFICER RENAUD: Very well, thank you,
14 good.

15 Let's see if Mr. Beltran has any cross-
16 examination?

17 MR. BELTRAN: Yes, I have some questions.

18 HEARING OFFICER RENAUD: All right, please give
19 him the mike.

20 MR. BELTRAN: I'm Tom Beltran, with California
21 Native Plan Society.

22 Mr. Moore, I've got a couple of questions.
23 Regarding the Seeley Wastewater Treatment facility and
24 correct me if I copied these numbers down incorrectly, your
25 conclusion was that the impact from diverting the water to

1 this project, from that facility, would have an
2 insignificant impact on the Salton Sea.

3 Did you read the Salton Sea draft environmental
4 impact report?

5 MR. MOORE: I've looked at a number of documents
6 regarding Salton Sea. I don't recall if I looked at that
7 specific document, but I did look at some of the master
8 planning studies, et cetera, for the Salton Sea.

9 MR. BELTRAN: Did you look at the water -- did you
10 review the water resources requirements for the preferred
11 alternative?

12 MR. MOORE: I did not take that into consideration
13 in making my evaluation of the reduction in flows to the
14 Salton Sea.

15 MR. BELTRAN: Then, when you say it's an
16 insignificant impact, how can you come to that conclusion
17 without doing the analysis, the prior analysis?

18 MR. MOORE: My assumptions of no significant
19 impact are based on the reduction in flows being diverted to
20 the Imperial Valley Solar project and the percentage of the
21 reduction. For example, .03 percent reduction.

22 MR. BELTRAN: I guess my concern is that in those
23 documents, in the documents that I was referring to, they
24 break down the -- the key issue for the Salton Sea is the
25 salinity and there are several different sources for the

1 water. Of course, there's Mexico, there's runoff from
2 surrounding terrain, there's projects like the Seeley
3 Wastewater, there's drainage from irrigation, and all of
4 these have different levels of salinity.

5 If you diver this, it's going to be a relatively
6 low salinity source of water. I would expect that the
7 impacts would be magnified many times over because of the
8 higher -- relatively higher quality of this water.

9 I find it hard to understand how you could come to
10 a conclusion that it's going to have an insignificant impact
11 without having done that analysis?

12 MR. MOORE: I, myself, am not doing the analysis
13 for the Seeley Wastewater Treatment facility upgrades. My
14 statements are based on these reductions in flow.

15 MR. BELTRAN: Okay. On the soil loss equation,
16 you say that it's from NRCS. Where does that -- what
17 location does that assume? Does it assume a location?

18 MR. MOORE: Yes, it does, it includes the rainfall
19 amounts for either specific counties or site-specific
20 rainfall amounts.

21 MR. BELTRAN: Does it take into account the
22 specific soil types?

23 MR. MOORE: Yes, it does.

24 MR. BELTRAN: Does it take into account whether
25 there are crusts or no crusts?

1 MR. MOORE: You can adjust the model to account
2 for crusts, some type of surface covering in, say for
3 example, an existing condition.

4 MR. BELTRAN: Mike Wood previously testified about
5 his site evaluation. I asked him if he -- he had said that
6 they had observed crusts on the project site. I asked him
7 if he had quantified it, he did not -- he said that he had
8 not. Did you?

9 MR. MOORE: I did not quantify the amount of
10 desert pavement on site.

11 MR. BELTRAN: In the documentation there was --
12 when I was looking at the model, it referred to a location
13 in Kansas as being the basis of the model. Is that the
14 model that you used in your analysis?

15 MR. MOORE: No, I believe I was using the site-
16 specific soils for the project.

17 MR. BELTRAN: Okay. In reading the Salton Sea
18 draft environmental impact report, did you read Appendix E,
19 the evaluation of playa dust emissions?

20 MR. MOORE: No, I did not.

21 MR. BELTRAN: The report includes a method called
22 the McDougal method. The report states that there's no
23 other method, other than this, which is an in situ. They
24 basically bring portable wind tunnels to the site and
25 they're able to quantify, specifically, it's not a predicted

1 model, it's an actual test to quantify the amount of
2 emissions that are given off with crust and without, and
3 they can disturb the soil, whatever. I mean, you can --
4 it's very specific.

5 Did you consider this method?

6 MR. MOORE: No, we did not consider that method
7 for this project. The goal of the soil loss equations was
8 to provide a quantitative number, trying to compare the
9 existing under a, albeit not with a crust on there, but
10 existing conditions versus post-project conditions with BMPs
11 implemented.

12 MS. FOLEY GANNON: And, also, it's my
13 understanding that the model you're referencing is something
14 that is usually done as part of the air analysis and not as
15 part of the soils and water analysis. And Mr. Moore is not
16 our air quality person, who didn't -- who has not run those
17 tests. Our air quality person testified yesterday.

18 MR. BELTRAN: Are you talking about the woman, I
19 don't remember her name.

20 MS. FOLEY GANNON: Yes. Julie Mitchell.

21 MR. BELTRAN: Well, okay.

22 MS. FOLEY GANNON: I'm just trying to give him a
23 background, again, for why there's certain areas that Mr.
24 Moore has expertise on and is happy to respond to questions.
25 And if he can't response to questions that you're asking,

1 it's just there may be a reason why he does not have
2 specific answers to some of the model questions that you're
3 asking about air modeling.

4 MR. BELTRAN: Well, I guess from my stand point
5 they're one in the same. I mean, soil resources, one of the
6 byproducts of it is they're pollution.

7 HEARING OFFICER RENAUD: Mr. Beltran, if you ask a
8 witness a question and he doesn't know, that's the time to
9 move on to another question.

10 MR. BELTRAN: I'm finished, thank you.

11 HEARING OFFICER RENAUD: All right, thank you.

12 MS. HOLMES: Hearing Officer Renaud, I don't know,
13 may we ask the witness questions about the exhibit that you
14 just passed out, just --

15 MS. FOLEY GANNON: Yes, this is the same
16 conditions that he had referenced in our earlier exhibit, so
17 he has seen this and --

18 MS. HOLMES: Yeah, there was a copy of this but
19 there was no foundation, there was no letter, in fact.

20 MS. FOLEY GANNON: Right, exactly, right.

21 MR. SILVER: There was no cover letter at all
22 submitted.

23 MS. FOLEY GANNON: Right. And, actually, we do
24 have representatives of the Planning Commission, who have
25 also arrived and -- or, I mean, planning officials who have

1 arrived, and are in the audience, and if we need to ask some
2 questions, we may be able to do that as well, this
3 afternoon.

4 MS. HOLMES: Well, I just thought rather than ask
5 discovery questions as staff is trying to gather information
6 necessary for its analysis, that there are specific
7 questions about this I would take the opportunity to ask
8 them now.

9 HEARING OFFICER RENAUD: You're talking about 118?

10 MS. HOLMES: Yes.

11 MS. FOLEY GANNON: We will do the best to have
12 them answer the questions that they can and, if they can't,
13 we can provide information later.

14 HEARING OFFICER RENAUD: We love to have you ask
15 questions.

16 MS. HOLMES: We love it, too.

17 HEARING OFFICER RENAUD: We would have loved to
18 have you ask more.

19 MS. HOLMES: Just as long as I get to ask more
20 later.

21 Mr. Scott, I believe you testified about the Dan
22 Boyer well. Can you explain why the assessor's parcel
23 number on the letter is different from the one on the
24 attachment with the specific terms?

25 MR. SCOTT: No, I can't.

1 MS. HOLMES: Okay.

2 MR. SCOTT: Oh, you know, let's see, I think that
3 they're actually --

4 MS. FOLEY GANNON: There has been a numbering
5 change in the parcel.

6 MR. SCOTT: Yeah, they're actually the same.

7 MS. FOLEY GANNON: So, it's actually one in the
8 same and we can get documentation about that, there's just
9 been a parcel change number.

10 MR. SCOTT: Yeah.

11 MS. HOLMES: Well, at some point we'll get -- I
12 presume we'll get some evidence that ties the letter with
13 the attachment?

14 MS. FOLEY GANNON: Absolutely.

15 MS. HOLMES: Do you know whether or not the flow
16 meter required by Condition T-3 was installed and sealed by
17 a California State licensed water well drilling contractor?

18 MR. SCOTT: I know that as of a month or more ago
19 it had not.

20 MS. HOLMES: And what's the date of this, it's
21 2008? Okay, thank you.

22 Do you know whether or not the well user has
23 complied with Section T-7, requiring written evidence to the
24 Planning and Building Department that the water meets safe
25 drinking water standards?

1 MR. SCOTT: No, I do not.

2 MS. HOLMES: Do you know whether or not the

3 Condition T-9 has been applied with in terms of addressing

4 previous and existing land use violations?

5 MR. SCOTT: No, I do not.

6 MS. HOLMES: And do you know whether or not there

7 is any -- I'm presuming not, but I'll ask the question

8 anyway, any metered flow data available regarding past use?

9 MR. SCOTT: No, there is no metered flow data.

10 MS. HOLMES: Thank you.

11 MR. SCOTT: It's generally written in a logbook,

12 from what I understand.

13 MS. HOLMES: And has the logbook been provided?

14 Are you planning to provide the logbook as evidence/

15 MS. FOLEY GANNON: We have not provided it to

16 date.

17 MS. HOLMES: Okay.

18 MS. FOLEY GANNON: And there is a meter that has

19 been installed in the well, now, and we will be providing

20 documentation as to compliance with this.

21 MS. HOLMES: Do you know when it was installed?

22 Not that I'm trying to cross-examine the lawyer here.

23 Last week?

24 MS. FOLEY GANNON: Last week.

25 HEARING OFFICER RENAUD: Okay, thank you.

1 MS. FOLEY GANNON: I have one redirect question
2 for you, Mr. Moore.

3 HEARING OFFICER RENAUD: Please.

4 MS. FOLEY GANNON: Following, again,
5 implementation of the project and completion of the COE
6 upgrade project, as we had previously discussed, we would
7 anticipate during operation there would still be, you know,
8 a third -- I mean, a fourth to a fifth of the discharge
9 would be being diverted to the project, but the remainder of
10 it would still be not affected by the project.

11 However, would you have an opinion on the quality
12 of the water that would then be discharged and potentially
13 reached, you know, the Salton Sea and the New River after
14 the upgrade project versus existing conditions?

15 MR. MOORE: Obviously, the tertiary water would be
16 of higher quality, but I can't -- I don't have the salinity
17 data to say that it would be, you know, exactly a change
18 from X to Y. The assumption would be that it would be of
19 higher quality water being discharged, but that's about all
20 I can say on that.

21 MS. FOLEY GANNON: Okay, thank you.

22 HEARING OFFICER RENAUD: All right, any further
23 cross on that?

24 MR. SILVER: I have just one more question.

25 HEARING OFFICER RENAUD: Please.

1 MR. SILVER: With regard to Condition T-9. Do you
2 have any knowledge that -- that at any point in time there
3 have been land use violations on the property of water well
4 16S9E36G4, that have resulted in cease and desist orders or
5 abatement orders by the county?

6 MR. SCOTT: I'm not aware of any.

7 MR. SILVER: And who was responsible for
8 negotiating the contract with the Boyer Water Company for
9 water service delivery for this project?

10 MR. SCOTT: Mr. VanPatten.

11 MR. SILVER: So, he would have performed due
12 diligence in connection with the entering into that
13 contract?

14 MR. SCOTT: I suspect so.

15 MR. SILVER: Thank you.

16 MS. MILES: I have one other -- one question.

17 HEARING OFFICER RENAUD: Yes.

18 MS. MILES: Mr. Moore, do you have any evidence
19 upon which to base a conclusion that there will still be any
20 discharge from the Seeley Wastewater Treatment facility into
21 the New River after an upgrade might be completed?

22 MR. MOORE: Currently, the Tessera has a will-
23 serve letter that would allow them to use up to 200,000
24 gallons per day. The average annual operations use is
25 30,000 gallons per day for the project. And the net

1 difference between what's being currently discharged, say
2 150,000 gallons per day, and the projected water use is a
3 difference of approximately five.

4 MS. MILES: Right, but my question is regarding
5 once the Applicant funds the upgrade project of the Seeley
6 Wastewater Treatment facility is there any indication that
7 that water will not be diverted for other purposes, and so
8 that there will be no discharge into the New River after the
9 upgrade?

10 I mean, I'm asking do you have any evidence that
11 there will be any discharge that we know of, like is there
12 any contract that they're still going to be putting some
13 water into the New River, or could it all be effectively
14 used for other purposes?

15 MR. MOORE: I have no knowledge of any future
16 projects that would be utilizing that water.

17 Presumably, the water that is not used for the IVS
18 project or by Tessera would be used by Seeley, either for
19 discharge or for other purposes. Those, I'm not aware of.

20 MS. MILES: Thank you.

21 MS. FOLEY GANNON: Just one redirect. But to your
22 knowledge does this project have any say over what happens
23 with the remainder of the water that it's not using?

24 MR. MOORE: No, that's up to the Seeley County
25 Water District.

1 MS. FOLEY GANNON: Thank you.

2 COMMISSIONER BYRON: Thank you, Mr. Renaud. A
3 couple of quick questions, if I may, gentlemen.

4 Just so everyone knows, the policy of this
5 Commission is we do not -- water's a very precious commodity
6 in this State, we recognize that, and as a general policy we
7 do not like the use of fresh water, ground or surface, for
8 the use in power plant cooling.

9 And the original design and the planned long-term
10 approach is obviously the preferred approach here.

11 I'm curious and I have some questions with that
12 regard. I think you had indicated, Mr. Moore, 33 acre feet
13 per year, is that for both phases, is that full build out?

14 MR. MOORE: That would be the full build out.

15 COMMISSIONER BYRON: And just give us a sense of
16 timing or sequence, will the full build out be completed
17 within that three-year period?

18 MR. MOORE: Well, currently, it's my understanding
19 that the full build out would be over a period of 40 months,
20 so it's a little bit plus.

21 COMMISSIONER BYRON: I can do that math.

22 MR. MOORE: Yes, so --

23 COMMISSIONER BYRON: So, as I recall, the
24 temporary water source is a request for one to three years?

25 MR. MOORE: Yeah, until such time as we get the

1 Seeley Wastewater Treatment Plant online, and that could be
2 a year, but until that requirement --

3 COMMISSIONER BYRON: So, you will likely not reach
4 the 33 acre feet per year during that three-year period; is
5 that correct?

6 MR. MOORE: During the three-year period of
7 construction, our water use would be approximately 50 acre
8 feet per year, if we can get additional supply of water from
9 Seeley. So, the construction water use, you know, may be up
10 to 50 acre feet per year. We would restrict that back to
11 the 40 acre feet per year, if we had to, and utilize the Dan
12 Boyer water well.

13 I'm not sure if I'm getting at your question.

14 COMMISSIONER BYRON: I think I understand. I was
15 going on the number, the 33 acre feet per year based upon
16 the operation.

17 MR. MOORE: Correct, yes.

18 COMMISSIONER BYRON: Okay. Now, I didn't hear
19 much about this on the Seeley Water Treatment supply source
20 of water. What happens if, for whatever reason, that those
21 modifications are not made and that water supply is not
22 available? Can you answer, on behalf of the project, what
23 would happen at that time?

24 MR. MOORE: At this point we would have to rely on
25 another source, be it the Boyer well or -- so, that's my

1 understanding.

2 COMMISSIONER BYRON: Is there another source than
3 the freshwater Boyer well?

4 MR. MOORE: Not that I'm aware of.

5 COMMISSIONER BYRON: Changing subjects a little
6 bit, I always like to put this kind of stuff in perspective.
7 Up until recently, our Commission has primarily been siting
8 large, natural gas-fired power plants that require a
9 substantial amount more water for cooling.

10 So, I'm hopeful you might help give us some
11 perspective in that regard. Do you have a sense -- you can
12 give it to me in any way you'd like, but how many megawatts
13 would 33 acre feet of water, again this would be the -- I'm
14 thinking long-term here, the secondary treated water, how
15 many megawatts from a combined cycle natural gas power plant
16 would that equilibrate?

17 MR. MOORE: In our AFC we had provided a table
18 with the comparison of water use rates. If you give me a
19 few minutes, I can look up that table. I don't have those
20 numbers off the top of my head.

21 COMMISSIONER BYRON: Well, I'd appreciate that, I
22 think that's very helpful to get a perspective of the amount
23 of water that we're talking about here.

24 And I was just trying to think, there's a number
25 of comparisons, but if you have that one, that would be very

1 helpful.

2 MS. FOLEY GANNON: Commissioner, one point of
3 clarification, the water here is not being used as cooling.

4 COMMISSIONER BYRON: I understand, but it's using
5 water.

6 MS. FOLEY GANNON: Yeah, absolutely.

7 COMMISSIONER BYRON: The public is under the
8 impression that renewable power plants do not use water and
9 some of them even use natural gas, and for good reason. But
10 they still do consume some -- they still do have some
11 consumables.

12 And I'm just curious as to whether or not we can
13 put this in perspective to how it might compare to combined
14 cycle natural gas-fired power plants.

15 MR. MOORE: Yeah, I don't believe that we have the
16 number for combined cycle. We have the power generation for
17 this --

18 MR. SILVER: Could we have the citation, please?

19 MR. MOORE: Sorry. This is Table 5.5-4,
20 "Comparison of Water Usage Rates."

21 MR. BUDLONG: In volume one or volume two?

22 MR. MOORE: This is AFC section 5.

23 MS. FOLEY GANNON: The AFC, not the staff
24 assessment. And the AFC is our Exhibit 1.

25 Yeah, so this in our Exhibit 1 and it's in volume

1 one or two, sorry?

2 MR. MOORE: I believe it's one. Yeah, volume one.

3 MR. BUDLONG: Of the original AFC?

4 MR. MOORE: Correct.

5 MR. BUDLONG: Not the supplement?

6 MR. MOORE: No, this is the original, Section 5.5

7 of the AFC.

8 COMMISSIONER BYRON: Well, let's assume he can

9 read from the table, we'll find the source later.

10 MR. MOORE: So, the power generation for IVS, with

11 approximately 33 acre feet per year, with 750 megawatts

12 would be 0.044 acre feet per year, per megawatt.

13 To compare with -- and I don't have, necessarily,

14 a combined cycle. I have on the high end maybe a

15 conventional coal-fired, at 11.2 acre feet per year, per

16 megawatt. And some other solar, for example, a solar

17 hybrid, Victorville Two, at 5.6 acre feet per year, per

18 megawatt.

19 COMMISSIONER BYRON: Well, it's fair to say it's

20 at least two orders of magnitude less water usage per

21 megawatt than even Victorville Two Solar Hybrid.

22 And also, you had the other comparison I was

23 interested in and that is agricultural comparison, looking

24 at different crops in this table. You want to go ahead and

25 describe that, briefly?

1 MR. MOORE: Certainly. For the agricultural
2 usage, for example let's say if we look at --

3 MR. SILVER: How about cotton. I mean, that's a
4 common crop here in the Imperial Valley.

5 MR. MOORE: So, if you say cotton at 3.2 to 5 acre
6 feet per acre, that doesn't --

7 MR. SILVER: Alfalfa.

8 MR. MOORE: The land use for solar II, that would
9 equate -- for IVS, excuse me, for this project, land usage
10 wise, that would be 0.005 acre feet per acre.

11 COMMISSIONER BYRON: Again, a couple orders of
12 magnitude or another way to look at it, it would be the
13 equivalent of irrigating about a one-hundredth of an acre.

14 Okay, gentlemen, thank you. Obviously, I'm still
15 very interested, though, in the issue around the
16 modifications that will be necessary for a permanent water
17 supply at the Seeley Wastewater Treatment facility. And I'd
18 appreciate, if counsel had any additional information or
19 evidence that they would be able to enter in that regard,
20 that would be very helpful, I think for this Committee.

21 MS. FOLEY GANNON: In regard to the approval
22 process, or in regard to the timing, or for all of it?

23 COMMISSIONER BYRON: If I understand you
24 correctly, what you're looking for is for this Committee to
25 approve a temporary water supply in lieu of the completion

1 of a permanent water supply.

2 MS. FOLEY GANNON: Correct.

3 COMMISSIONER BYRON: Well, we're not very sanguine
4 about doing that unless we feel relatively assured that that
5 permanent water supply --

6 MS. FOLEY GANNON: I understand.

7 COMMISSIONER BYRON: -- will indeed come forth.

8 MS. FOLEY GANNON: Understand.

9 HEARING OFFICER RENAUD: Okay, anything further of
10 these witnesses, from anybody? No.

11 All right. Now, if I recall correctly, Ms. Miles,
12 you have witnesses on -- a witness or witnesses on the phone
13 to tender for cross-examination?

14 MS. MILES: Yes.

15 HEARING OFFICER RENAUD: So, why don't we proceed?
16 And they're on this topic, as I understand it. Yes.

17 MS. MILES: Soil and water resources.

18 HEARING OFFICER RENAUD: So, let's proceed with
19 that and I take it you'd like to introduce them and their
20 testimony?

21 MS. MILES: Yes.

22 HEARING OFFICER RENAUD: Thank you.

23 MS. MILES: So, our witnesses on the phone are Dr.
24 Chris Bowles and Chris Campbell.

25 HEARING OFFICER RENAUD: Can we make sure they're

1 there? Dr. Bowles, are you there?

2 DR. BOWLES: Yes, we're here.

3 HEARING OFFICER RENAUD: Good. Mr. Campbell?

4 MR. CAMPBELL: Here.

5 HEARING OFFICER RENAUD: Okay, good.

6 MS. MILES: Can you please state your names for

7 the record?

8 DR. BOWLES: Chris Bowles. We're getting some

9 really -- we're getting some really bad --

10 HEARING OFFICER RENAUD: Turn the mike off, see

11 what happens.

12 Okay, try again.

13 DR. BOWLES: Chris Bowles. That's slightly

14 better. It's okay, I think.

15 COMMISSIONER BYRON: It could be the volume's up

16 so high it's saturating.

17 (Off-record discussion regarding microphones.)

18 MS. MILES: Okay, does that sound better? Now,

19 they can't hear me.

20 Dr. Bowles?

21 DR. BOWLES: Yes, I'm here.

22 MS. MILES: Okay, so can you hear me?

23 DR. BOWLES: Yeah, I think the feedback's gone,

24 thank you.

25 MS. MILES: Good, okay.

1 All right, so we're going to swear you in now.

2 THE REPORTER: Mr. Campbell, first. Can you hear

3 me?

4 MR. CAMPBELL: Yes, I can hear you.

5 THE REPORTER: Okay. Can you tell me where you're

6 located?

7 MR. CAMPBELL: West Sacramento, California.

8 THE REPORTER: Thank you very much. Would you

9 please stand and raise your right hand for me?

10 MR. CAMPBELL: Yes.

11 Whereupon,

12 CHRISTOPHER CAMPBELL

13 was called as a witness herein and, having been first duly

14 sworn, was examined and testified as follows:

15 THE REPORTER: Would you please state your full

16 name for the record and spell it for me?

17 MR. CAMPBELL: Christopher Campbell, C-h-r-i-s-t-

18 o-p-h-e-r, Campbell, C-a-m-p, as in Paul, b as in boy, -e-l-

19 l.

20 THE REPORTER: Thank you.

21 Okay, and the doctor?

22 HEARING OFFICER RENAUD: Dr. Bowles, you're about

23 to be sworn.

24 THE REPORTER: Do you hear me?

25 DR. BOWLES: Yes, I'm here.

1 THE REPORTER: Can you tell me where you're
2 located?

3 DR. BOWLES: West Sacramento, California.

4 THE REPORTER: Thank you very much. Could you
5 please stand and raise your right hand for me?

6 DR. BOWLES: Yes.

7 Whereupon,

8 CHRISTOPHER BOWLES

9 was called as a witness herein and, having been first duly
10 sworn, was examined and testified as follows:

11 THE REPORTER: Thank you very much. Could you
12 please state your name for the record, your full name, and
13 spell it for me?

14 DR. BOWLES: Christopher Bowles, C-h-r-i-s-t-o-p-
15 h-e-r, second name Bowles, B-o-w-l-e-s.

16 THE REPORTER: Thank you.

17 MS. MILES: Okay, Dr. Bowles, would you please
18 explain what testimony you're sponsoring today?

19 DR. BOWLES: Yeah, our testimony was testimony
20 that was jointly prepared with Chris Campbell and myself,
21 and rebuttal testimony that was also prepared by myself and
22 Chris Campbell.

23 MS. MILES: And do you have any changes to your
24 testimony at this time?

25 DR. BOWLES: No, we don't.

1 MS. MILES: Are your opinions and your testimony
2 your own?

3 DR. BOWLES: Yes, they are.

4 MS. MILES: Intervenor moves to enter into the
5 record Exhibits 478 through 492, and 499-A through 499-D.

6 Dr. Bowles, can you summarize or --

7 HEARING OFFICER RENAUD: Let me just check --

8 MS. MILES: Oh, sorry.

9 HEARING OFFICER RENAUD: -- any objection?

10 MS. FOLEY GANNON: No objection.

11 MS. HOLMES: No objection.

12 HEARING OFFICER RENAUD: Those will be admitted.
13 Proceed.

14 MS. MILES: Thank you. Please summarize your
15 qualifications?

16 DR. BOWLES: Yeah, I've got degrees in land
17 surveying and civil engineering, the civil engineering with
18 a specialization in -- with resources engineering. I've got
19 a doctorate in hydraulic engineering.

20 I've been practicing in water resources
21 engineering for about 17 years and 12 of these years being
22 spent in the United States. The other years, obviously, in
23 the UK, judging by my accent.

24 I'm specialized in hydraulics, hydrology,
25 geomorphology in various U.S. states and internationally.

1 I've practiced in California over the last 12
2 years in a wide variety of areas, from the Mexican border to
3 the Oregon border.

4 MS. MILES: Thank you. Can you describe, briefly,
5 what it was that CURE asked you to do?

6 DR. BOWLES: Yes, CURE asked myself and Chris
7 Campbell to independently evaluate degradation of soil and
8 water resources as a result of the Applicant's project
9 design, including any potentially significant impacts from
10 the project on the watershed.

11 MS. MILES: Can you talk, briefly, about the
12 methodology for your work?

13 DR. BOWLES: Yes, we reviewed the staff
14 assessment, application for certification, supplements and
15 supporting information, and other relevant documents that we
16 were provided and that have been docketed in this
17 proceeding.

18 MS. MILES: And did you do any other
19 investigations?

20 DR. BOWLES: No.

21 MS. MILES: Okay. Please provide a summary of the
22 findings from your investigation.

23 DR. BOWLES: Did you want to get Christopher
24 Campbell's qualifications or do you just want to move on.

25 MS. MILES: That's a good idea. We're going to

1 probably be doing this as a panel, with both of you
2 responding, so let's go ahead and do that.

3 MR. CAMPBELL: Okay, this is Christopher Campbell.
4 I have a master's in biological and agricultural engineering
5 from the University of Idaho, with a soil and water
6 engineering focus. I've been practicing for the last nine
7 years in California, in the water resources field.

8 MS. MILES: Thank you. So, would you like to
9 proceed, now, with providing a summary of the findings from
10 your investigation?

11 DR. BOWLES: Yeah. We got a feeling that the
12 staff's assessment failed to analyze or mitigate the impacts
13 of certain aspects of the soil and water resources issues.

14 Our review and analysis summary can be
15 characterized into five main focus areas, those five areas
16 being hydrology, soil erosion, groundwater recharge,
17 sediment transport and water quality.

18 Addressing each of those briefly as I can, with
19 hydrology first, we believe that the amount of rainfall
20 runoff that will result from the project is significantly
21 under-estimated.

22 The staff assessment did not consider soil
23 compaction as a result of general constriction activities
24 and as a result of the construction, about 250 miles of
25 unpaved roads and other impervious areas, such as parking

1 lots and buildings.

2 Also, the application of soil binders and the
3 general loss of cryptobiotic soils and desert pavements all
4 added to reduction in infiltration -- could add to reduction
5 in infiltration capacity, with a significant reduction,
6 should I say, and a corresponding increase in runoff.

7 Also, the staff assessment relied upon, we
8 believe, incorrect and simplistic assumptions and modeling
9 about storm events and ignored the effects of climate change
10 completely, thereby failing to account for the current
11 intensity, for frequent storms in the desert and likely
12 increases in future storm intensity due to climate change.

13 The frequency, duration, timing and volume of
14 runoff will substantially change as a result of the project.

15 Secondly, soil erosion, the amount of soil erosion
16 that will result from the project has been significantly
17 under-estimated in the staff assessment. Because that soil
18 erosion has been significantly under-estimated, the staff
19 assessment did not analyze the effects of soil erosion and
20 transport downstream, off site, and that could result in
21 substantial off-site impacts to channels downstream.

22 There were great simplifications made when using
23 the soil loss calculations. In addition, no field
24 verification or field measurements of soil erosion
25 parameters were considered.

1 The soil loss calculations, using the methodology,
2 relies solely on theoretical values and co-efficients.

3 Thirdly, groundwater recharge. As a result of the
4 reduced infiltration and increased runoff, which we believe
5 will occur, the potential for groundwater recharge could be
6 reduced in already a fragile desert environment.

7 In addition, the Dan Boyer groundwater source has
8 not been fully analyzed for the long-term cumulative impacts
9 to groundwater levels and recharge.

10 We have further analyzing this issue, based on
11 additional studies that have been undertaken in the region
12 that we need to obtain.

13 And we're going to provide additional testimony
14 when that review is completed.

15 Fourth, sediment transport. Because the hydrology
16 will be changed so significantly by the project, we're
17 talking about in terms of frequency, duration, timing and
18 volume of runoff, it's likely that more sediment will be
19 transported through the site and scoured from the wash
20 areas.

21 On-site erosion in the watershed will increase as
22 a result of the project. This will result in more sediment
23 being transported downstream of the site, with resulting
24 off-site impacts. And as you know, there's some very
25 valuable aquatic resources between the site and the Salton

1 Sea.

2 The amount of sediment transported through the
3 site and downstream of the site has been under-estimated.
4 The 1-D modeling, one-dimensional hydraulic modeling
5 techniques used are over-simplistic and readily available
6 two-dimensional modeling should be used in applications such
7 as this, in alluvial sands and desert washes.

8 Staff's assessment failed to analyze these project
9 effects and failed to consider very significant, unmitigated
10 project impacts on the watershed, such as impacts to the New
11 River and Salton Sea.

12 Finally, water quality. The project is going to
13 result in unanalyzed released of soluble salts, which could
14 impact downstream all the way to the Salton Sea.

15 Increased runoff will result in excess sediment,
16 which will be transported downstream and also increase the
17 potential for water quality impairment downstream, as water
18 quality constituencies concerned are usually transported on
19 finer sediments through absorption and also in solution in
20 the runoff flow.

21 And that completes the summary of the assessment
22 that we undertook.

23 MS. MILES: Thank you, Dr. Bowles.

24 We will have you come out and belay opening
25 testimony in a future hearing, so thank you for giving your

1 summary.

2 And we're going to now make the witness available
3 for cross-examination.

4 HEARING OFFICER RENAUD: Thank you. Applicant?

5 MS. FOLEY GANNON: Staff's first.

6 HEARING OFFICER RENAUD: Applicant.

7 MS. FOLEY GANNON: Dr. Bowles and Mr. Campbell, a
8 couple of questions, this is Ella Gannon, counsel for the
9 Applicant.

10 In your studies or analysis that you have
11 conducted, did you do any field studies, did you gather any
12 specific information about the site or about the site on
13 which to base your analysis?

14 DR. BOWLES: No, we have not specifically visited
15 the site in person, neither myself, nor Chris Campbell. In
16 order to familiarize ourselves more with the site, we
17 reviewed many different documents, aerial photos, Google
18 Earth, and photos on the ground and we've spoken with
19 various local experts who have done work at the site.

20 MS. FOLEY GANNON: But you didn't have any
21 specific field data that you were conducting models on; is
22 that correct?

23 DR. BOWLES: Only whatever data was provided to us
24 by the Applicant, through the Applicant studies.

25 MS. FOLEY GANNON: Okay.

1 DR. BOWLES: None of our own personal data, no.

2 MS. FOLEY GANNON: Okay, then there's only one
3 follow-up question I have and I'm confused because I didn't
4 see this in your earlier testimony and maybe I'm just
5 misunderstanding what it is, but you were saying that the
6 project is somehow going to result in additional salts in
7 downstream areas? I don't understand what the source of
8 those salts would be.

9 DR. BOWLES: The salt's contained in the soils
10 through years and years of evaporation and deep position
11 within those layers of soils. When those soils are
12 disturbed through construction activities they're exposed,
13 such as blading or cutting access roads, about 250 miles of
14 roads, some of those soils are going to be exposed to the
15 elements and, hence, precipitation and runoff.

16 MS. FOLEY GANNON: And, again, was that said
17 analysis about the amount of salts and the impacts of it,
18 was it based on looking at the particular quality of the
19 soils, or the construction methods, or if there were binders
20 used on the roads, I mean, those types of project-specific
21 things? Or is it just saying that there's a potential for
22 salts when there's ever construction in the desert, is that
23 a fair characterization?

24 DR. BOWLES: Yeah, there's potential and we
25 haven't seen any analysis, field measurements, or field

1 sampling done to verify or otherwise the potential for this
2 to happen.

3 MS. FOLEY GANNON: Okay, thank you for answering
4 my questions.

5 MS. MILES: And I'd just to clarify for the record
6 that we did discuss soluble salts in the rebuttal testimony,
7 so it's in there.

8 HEARING OFFICER RENAUD: Thank you. Staff?

9 All right, Mr. Budlong, cross-examination?

10 Mr. Beltran?

11 MR. BELTRAN: No.

12 HEARING OFFICER RENAUD: All right, thank you.

13 Witness can be excused then, witnesses. Oh, unless the
14 Commissioners have questions.

15 No. All right, thank you.

16 DR. BOWLES: Okay, thanks very much.

17 HEARING OFFICER RENAUD: Thanks for coming.

18 MS. FOLEY GANNON: We would suggest that if
19 Budlong wants to put on Edie Harmon for the limited
20 testimony on water we do have, again, members from the
21 county here and it might be useful if they're here in case
22 questions come up that they might be able to answer for us.

23 HEARING OFFICER RENAUD: I think that's an
24 excellent suggestion. Why don't you, Mr. Budlong, proceed
25 with your witness.

1 MR. SILVER: Okay. And I just want to be clear
2 that Mr. Budlong does have direct testimony as well. But I
3 think in terms of proceeding logically here, with regard to
4 the water issue, he's going to call Mrs. Harmon first, just
5 for the limited purposes of introducing this document.

6 HEARING OFFICER RENAUD: Fine. Please proceed.

7 MR. SILVER: And so, to that extent, it is also
8 clear that we are not offering from her testimony with
9 regard to hydrology, she's here just for a limited purpose
10 of introducing this document, and so I think there would be
11 no need to voir dire her with regard to her qualifications.

12 HEARING OFFICER RENAUD: Does anyone wish to voir
13 dire Edie Harmon?

14 Will she be presenting any expert opinion?

15 MR. SILVER: No.

16 HEARING OFFICER RENAUD: Opinion testimony?

17 MR. SILVER: No.

18 HEARING OFFICER RENAUD: All right, then, I would
19 agree it doesn't matter.

20 MR. SILVER: Yes, and she is reserving the
21 right --

22 HEARING OFFICER RENAUD: Could we just proceed and
23 stop preserving our rights.

24 MR. SILVER: Yes.

25 HEARING OFFICER RENAUD: Let's proceed. Thank

1 you.

2 THE REPORTER: Would you please raise your right
3 hand?

4 Whereupon,

5 EDITH HARMON

6 was called as a witness herein and, having been first duly
7 sworn, was examined and testified as follows:

8 THE REPORTER: Thank you very much. Would you
9 please have a seat, state your name for the record and spell
10 it for me, please?

11 MS. HARMON: Edith Harmon, H-a-r-m-o-n. I go by
12 Edie.

13 HEARING OFFICER RENAUD: Good. Put that
14 microphone right in front of you, please.

15 MR. SILVER: So, Mrs. Harmon, did you have
16 occasion this morning to go to the planning department and
17 request certain documents?

18 MS. HARMON: I did.

19 MR. SILVER: And what were the documents that you
20 requested?

21 MS. HARMON: Requested a copy of the conditional
22 use permit for the Boyer well, 16 South 9 East, 34G4.

23 MR. SILVER: And did you also request any document
24 relating to well registration?

25 MS. HARMON: Yes. And we showed the staff at the

1 planning department the document that was in the exhibit on
2 the groundwater hydrology for the West Wind Water Company,
3 there was a letter, and there was a copy of specific
4 conditions. And that document was taking to the planning
5 director to review and we initially were told that there was
6 no conditional use permit for a water well for that
7 property, by the clerk that took the request.

8 MR. SILVER: And so was there then, at any time,
9 tendered to you personally by the planning director, Mr.
10 Heuberger, a letter dated September 7, 2004, to Michele
11 Brammer, signed by Jim Minnick, Planner IV?

12 MS. HARMON: Yes, there was. I have a copy of the
13 letter and, if I may --

14 MR. SILVER: Well, let's get it into the record.
15 We'd like to mark it for identification and having
16 established how it came into being, I think we would like to
17 put it into evidence at this point.

18 MS. FOLEY GANNON: Do we have copies of it?

19 HEARING OFFICER RENAUD: Looking for a number
20 here.

21 MR. SILVER: Yes, we do and I will distribute
22 them.

23 MS. HARMON: I have a request, because I have
24 identified other documents, could this be identified as
25 Exhibit 565, because I have -- I've already marked up some

1 other documents that I had wanted, you know with other
2 exhibit numbers.

3 HEARING OFFICER RENAUD: That sounds like a good
4 number. So, you have two, three and four. You have three
5 others before that?

6 MS. HARMON: Yes.

7 HEARING OFFICER RENAUD: All right, good, we'll
8 make it --

9 MR. SILVER: And so, Mr. Hearing Officer, can I
10 give you one?

11 HEARING OFFICER RENAUD: Yes, you may approach.
12 You don't have to do that.

13 MR. SILVER: Thank you.

14 MS. HARMON: Does somebody want the numbered copy?

15 HEARING OFFICER RENAUD: This will be 565, a
16 letter dated September 7, 2004, to Michele Brammer.

17 MS. FOLEY GANNON: Before this is offered into
18 evidence, I do have a couple questions about it, if we can
19 ask? I don't know if there were other things you wanted to
20 offer first --

21 HEARING OFFICER RENAUD: Are you done introducing
22 the letter, Counsel?

23 MR. SILVER: Well, we're --

24 HEARING OFFICER RENAUD: And you're offering it
25 into evidence?

1 MR. SILVER: We're offering it into evidence. I
2 have some further questions --

3 HEARING OFFICER RENAUD: All right.

4 MR. SILVER: -- to ask Mrs. Harmon about what was
5 produced.

6 MS. FOLEY GANNON: I'm just saying, before it's
7 accepted into evidence I have a few questions to ask.

8 HEARING OFFICER RENAUD: If you wish to move it
9 into evidence after your questioning, then we'll wait.
10 Otherwise, if you want to move it into evidence now, she's
11 entitled to question and ask her questions.

12 MR. SILVER: Well, I'll move it into evidence now.

13 HEARING OFFICER RENAUD: All right, then counsel
14 may ask her questions.

15 MS. FOLEY GANNON: Obviously, I have not had a
16 chance to look at this in detail, but just glancing at it I
17 notice that it's not a signed letter and it's not on
18 letterhead. And so, I'm just wondering how we know this was
19 ever an executed letter and who it was actually done by and
20 from.

21 MS. HARMON: The author, Jim Minnick, is here and
22 it was personally delivered by Planning Director Jurg
23 Heuberger this morning. Mr. Silver and I were sitting in
24 the planning department and the letter was produced, and I
25 was told that other documentation related to this was in

1 storage at Sunbeam Lake.

2 And one of the things that concerned me about the
3 letter was the statement that the county records indicate
4 that Mr. Elfering was never legally allowed to sell 50,000
5 gallons that he had requested and, presumably, any water
6 from the site. But this is a letter that Mr. Heuberger
7 personally --

8 HEARING OFFICER RENAUD: Well, it sounds as though
9 we have a witness who could attest --

10 MS. HARMON: And he's here in the room.

11 HEARING OFFICER RENAUD: -- to the genuineness of
12 it. And so, if you wish to question that witness, I think
13 this would be a good time to do that, otherwise --

14 MS. HARMON: I'm sorry, but I just want to add
15 that I assume that since I know the planning director and I
16 know Jim Minnick, I assume that when the planning director
17 is giving us something, himself, that it's --

18 HEARING OFFICER RENAUD: I understand.

19 MS. FOLEY GANNON: I'm not calling into question
20 what someone was saying. What I'm saying is when we are
21 offering things into evidence they are usually executed and
22 signed.

23 When things come from a county official, it would
24 usually have to be on the letterhead, so I'm just --

25 MS. HARMON: I understand.

1 MS. FOLEY GANNON: Yeah, that's all, I was just a
2 little confused by the letter and I'm just trying to
3 understand it, that's all.

4 MS. HARMON: I'm just assuming that maybe, since
5 everything is in archives --

6 HEARING OFFICER RENAUD: We don't need to discuss
7 this further. Do you wish to --

8 MR. SILVER: Excuse me, may I make a comment with
9 regard to that? Just one second, I just mislaid the --
10 where's the other letter? Where's the well registration
11 letter? Oh, here it is, I've got it. All right, I found it
12 and I withdraw the question.

13 HEARING OFFICER RENAUD: I think we'd like to have
14 the author of the letter come forward for purposes of
15 verification, I think that would be appropriate at this
16 point.

17 MS. FOLEY GANNON: Just because, again, just we
18 haven't had a chance to look at this or understand it, so
19 that would just be helpful to get --

20 HEARING OFFICER RENAUD: Before we can admit it, I
21 think it would be appropriate just to make sure that we have
22 a witness here who can testify under oath that he's the
23 author of the letter and it's a genuine copy. All right.

24 MS. FOLEY GANNON: That would be helpful, thank
25 you.

1 HEARING OFFICER RENAUD: So, can we get that
2 witness forward, please?

3 MS. HARMON: Do you want me to leave or just stay
4 here?

5 HEARING OFFICER RENAUD: You can stay there.
6 Good afternoon, sir, please face the reporter to
7 be sworn.

8 THE REPORTER: Please raise your right hand.
9 Whereupon,

10 JAMES MINNICK
11 was called as a witness herein and, having been first duly
12 sworn, was examined and testified as follows:

13 THE REPORTER: Thank you. Would you please have a
14 seat and state your full name for the record, and spell it
15 for me, please?

16 MR. MINNICK: James Alvin Minnick. J-a-m-e-s A-
17 l-v-i-n M-i-n-n-i-c-k.

18 THE REPORTER: Thank you.

19 MS. FOLEY GANNON: Do you want me to do it?

20 HEARING OFFICER RENAUD: Indeed, Counsel, yes.

21 MS. FOLEY GANNON: As I think you just heard, we
22 just received a copy of this letter for the first time today
23 and, again, we haven't had a chance to even read through it,
24 yet, so appreciate having you here to be able to answer.

25 Are you aware of the contents of this letter?

1 MR. MINNICK: Yes, I wrote this.

2 HEARING OFFICER RENAUD: Exhibit 565, just to make
3 sure.

4 MS. FOLEY GANNON: Five sixty-five. And was this
5 letter executed and sent to Michael Brammer?

6 MR. MINNICK: Michele Brammer.

7 MS. FOLEY GANNON: Michele Brammer?

8 MR. MINNICK: Yes, it was, back in 2004.

9 MS. FOLEY GANNON: Okay. Okay, I'm satisfied.

10 COMMISSIONER BYRON: Did we establish who Mr.
11 Minnick is?

12 MR. MINNICK: Oh, I'm sorry.

13 MS. FOLEY GANNON: Good thinking.

14 MR. MINNICK: Currently, I'm the Planning Division
15 Manager for the Imperial County Plan Development Services
16 Department. At the time the letter was written, I was a
17 Planner IV.

18 COMMISSIONER BYRON: Mr. Minnick, thank you for
19 being here this afternoon.

20 MS. FOLEY GANNON: Thank you.

21 COMMISSIONER BYRON: I don't know if we're done
22 with you. If you'll stay for a few more minutes, let's wait
23 for a second.

24 HEARING OFFICER RENAUD: All right, so there's a
25 pending motion to admit this into evidence, unless anyone

1 has further questions regarding the authenticity of the
2 document.

3 MS. FOLEY GANNON: Could we ask what the purpose
4 of this letter is being admitted into evidence for?

5 HEARING OFFICER RENAUD: You may ask counsel that.

6 MR. SILVER: Well, Mrs. Harmon can characterize
7 it.

8 MS. HARMON: The importance of this letter, and if
9 you've had an opportunity to read any of the things that
10 I've submitted, there is a long history of litigation
11 relating to groundwater expert and groundwater use in
12 Ocotillo.

13 There's been a lot of well interference, there's
14 been ongoing monitoring.

15 The basin may have a large basin, a large land
16 area, what sounds like a lot of groundwater, but one of the
17 exhibits that I wanted to admit is there's only 15,500 acres
18 of privately owned land in the groundwater basin, so all of
19 the pumping is concentrated.

20 And this well talks about some of the controversy,
21 some of the legal history, some of the problems --

22 MR. SILVER: Well, can you characterize, Mrs.
23 Harmon, I'm sorry to interrupt you, but could you just
24 characterize what the letter states in summary form?

25 MS. HARMON: In summary --

1 HEARING OFFICER RENAUD: I'd like to stop you two,
2 please. I want to short-circuit this and get to the heart
3 of the matter.

4 MS. HARMON: Okay.

5 HEARING OFFICER RENAUD: The question was asked is
6 what's -- I believe your question is, basically, what's the
7 relevance of the letter?

8 MS. FOLEY GANNON: Uh-hum.

9 HEARING OFFICER RENAUD: All right. Well, I can
10 tell you right now that we have admitted into evidence
11 Exhibit 118, which is a letter to Dan Boyer, from planning,
12 and it references Westwind Water Company, and gives an
13 assessor's parcel number.

14 The 2004 letter, 565, also references Westwind
15 Water Company and the same parcel number and so I --

16 MS. FOLEY GANNON: If this is offered to give
17 history about the well, we have no objection.

18 HEARING OFFICER RENAUD: Okay, very good. If
19 there's nothing further, we will admit it into evidence and
20 ask that it be that now the question proceed on direct.

21 MS. HARMON: And the reason this is significant is
22 Dan Boyer and the project Applicant have made assertions
23 that in the past the well was selling up to a hundred acre
24 feet a year of groundwater. There's no evidence in the
25 record, in terms of electrical records, truck counts,

1 monitoring data. The only information that was provided by
2 the Applicant in that document was pumping data from 1990 to
3 2004. This cease and desist -- this letter talks about
4 cease and desist, there's no indication of pumping
5 afterwards.

6 You heard earlier that they did not, that there
7 was not attempt to comply with the conditions for monitoring
8 until last week.

9 I submit this letter into evidence because it says
10 the county records indicate that there was never -- that the
11 owner was never legally allowed to sell 50,000 gallons that
12 he had requested or, presumably, any amount. So, if there's
13 no indication that it was --

14 HEARING OFFICER RENAUD: Could you point us to the
15 paragraph or sentence you're referencing?

16 MS. HARMON: This would be page 3.

17 HEARING OFFICER RENAUD: Okay.

18 MS. HARMON: The last sentence that begins, "The
19 EIR project description" and then the last sentence there,
20 and there's a misspelling on the property and it says Mr.
21 Melphering or Mipherling, but it's Melphering. "Therefore,
22 based on the county records Mr. Melphering was never legally
23 allowed to sell the 50,000 gallons he had requested and,
24 presumably, any water from the site."

25 MR. SILVER: It's being submitted for the purpose

1 of showing that at least as of September 7th, 2004 there was
2 no valid conditional use permit for this -- there was no
3 valid conditional use permit for this use and there was, at
4 that time, an outstanding cease and desist order issued by
5 the county with regard to illegal sale and transport of
6 water.

7 HEARING OFFICER RENAUD: I would like to suggest
8 that since we have the author here, the best person to tell
9 us what the letter says is that person. And if one of you
10 counsel would like to ask those questions, great. If not,
11 one of us will.

12 Any volunteers?

13 MR. SILVER: Well, yes.

14 HEARING OFFICER RENAUD: Please use your
15 microphone.

16 MR. SILVER: Yes, Mr. Minnick, can you tell the
17 Commissioners what the letter said?

18 MR. MINNICK: Well, let me put this in
19 perspective. The applicant or the actual property owner,
20 Mrs. Brammer, had requested verification of her water usage
21 and provided -- the information she provided at the time
22 that the letter was written lacked certain information, our
23 files lacked certain information.

24 Subsequent to this initial response from the
25 county, we went through an entire process through the

1 planning commission and, ultimately, to the board of
2 supervisors to establish the water rights that this well
3 had, which is 40 acre feet, which was established by the
4 planning commission.

5 Mrs. Brammer still still disagreed with it,
6 thinking that a hundred plus was what she had a right to,
7 appealed to the board of supervisors. The board of
8 supervisors ultimately agreed with the planning commission
9 and denied the appeal.

10 The letter that was submitted into record prior
11 to, I don't know the number, apologize for that, with the
12 attached conditions is what went before the planning
13 commission in 2005, post this letter, that identifies what
14 the planning commission, as well as subsequently the board
15 of supervisors agreed, as rights to the water well, and the
16 amount, and what the conditions for that well should be.

17 So, yes, this is a valid letter at the time it was
18 written. Subsequent to this letter we went through a
19 process to verify the water rights on that well.

20 HEARING OFFICER RENAUD: Does the letter -- should
21 the letter lead to a conclusion that the Dan Boyer Water
22 Company does not have the right to pump water?

23 MR. MINNICK: No.

24 HEARING OFFICER RENAUD: Does the letter tell us
25 how much water the Dan Boyer Water Company has a right to

1 pump?

2 MR. MINNICK: No.

3 HEARING OFFICER RENAUD: Okay. Do you know --

4 MR. MINNICK: The letter was a fact-finding letter

5 responding to an applicant.

6 HEARING OFFICER RENAUD: All right.

7 MR. MINNICK: The subsequent process, through the

8 planning commission, established the amount of water and the

9 rights.

10 HEARING OFFICER RENAUD: All right. So, when the

11 letter says Mr. Miphering and I think that's supposed to be

12 Elphering, was never legally allowed to sell the 50,000

13 gallons he had requested, that's historical; right, that

14 does not pertain to the current owner's rights. Is that

15 correct?

16 MR. MINNICK: Mr. Elphering was asking, if I

17 remember right, was asking for more water than was

18 originally allowed under the permit that created the trailer

19 park. The establishment subsequent to this was that 40 acre

20 feet was the historical use of the water. And the

21 documentation that was provided -- if you notice, first and

22 foremost I do apologize, I was unaware that this quick

23 printout from our server was going to be used in your thing.

24 Had I know that, we would have went to the archives,

25 actually pulled up the signed letter, along with the

1 attachments A through N, that you're not having here,
2 either, as well as the administrative records of the entire
3 proceedings for your review.

4 HEARING OFFICER RENAUD: I think we would really
5 like that, especially the attachments where I see the
6 conditional use Permit 10273, which appears to be Attachment
7 C, so we could get that, which is kind of something
8 everybody's been talking about.

9 COMMISSIONER EGGERT: So, yeah, again, I think
10 this is quite helpful. But I guess, maybe to follow on to
11 your, I think, very succinct and concise description of the
12 relevance -- or the relationship between these two letters,
13 did I understand you correctly in that the conditions that
14 were established under the November 13th, 2008 letter, T-2,
15 which is 40 acre feet, is the currently approved?

16 MR. MINNICK: Yes.

17 COMMISSIONER EGGERT: Okay.

18 MR. MINNICK: And it was established, actually, in
19 2005 due process.

20 COMMISSIONER EGGERT: Okay, so that's referencing
21 the --

22 MR. MINNICK: The letter that you have is a letter
23 to the current property owner, stating that if you want to
24 use the water, you have to comply with these regulations.

25 COMMISSIONER EGGERT: I see.

1 MR. MINNICK: It's just to reaffirm it.

2 HEARING OFFICER RENAUD: Any of you counsel know
3 if we have the 2005 letter? All right, would it be possible
4 to get a copy of that, as well, from anybody?

5 MR. SILVER: The February 23rd, 2005 letter states
6 that the Imperial County Planning Commission reviewed and
7 approved the water well registration. Or it just says, this
8 letter says, on February 23rd, 2005 -- this was a letter
9 written on November 13th, 2008, there was approval.

10 So, not only do we not have any correspondence
11 relating to February 23rd, 2005, we don't have the action or
12 minutes of the Imperial County Planning Commission and don't
13 know, really, what we did. All we have is a
14 characterization by David Black, Planner IV, as to what
15 occurred.

16 HEARING OFFICER RENAUD: Well, okay, the Committee
17 would suggest that if it is Mr. Budlong's intention to
18 establish that there is doubt as to the permitted pumping
19 from the Boyer well as of now, through such documents, then
20 it would be your responsibility to get them and to move them
21 into evidence. All right?

22 Otherwise, what we have at this point is testimony
23 from a sworn witness that 40 acre feet is the permitted
24 pumping amount today and we also have the sworn testimony of
25 the Applicant's witnesses saying the same thing.

1 So, that's the state of the evidence. If you want
2 to put in other evidence, you should get it and put it in.

3 MR. SILVER: Well, we certainly intend to do that.
4 We were affirmatively misled by the record. The record, in
5 numerous places, refers to a conditional use permit. There
6 is no conditional use permit. The conditional use permit
7 that was issued was reversed by the board of supervisors.

8 HEARING OFFICER RENAUD: You know, I'm not going
9 to accept your representations about that. We want to see
10 documents and testimony --

11 MR. SILVER: That's what the letter says.

12 HEARING OFFICER RENAUD: You bring in the
13 testimony, and the letters, and the documents and we'll look
14 at that.

15 MR. SILVER: Well, you know --

16 HEARING OFFICER RENAUD: Does one of the present
17 exhibits say that 10273, the COP was reversed?

18 MR. SILVER: Yes.

19 HEARING OFFICER RENAUD: All right, tell me what?

20 MR. SILVER: The exhibit we just put into
21 evidence --

22 MS. HARMON: Exhibit 565.

23 HEARING OFFICER RENAUD: Does it?

24 MR. SILVER: States that unambiguously.

25 HEARING OFFICER RENAUD: All right, and that's the

1 conditional use permit from 1973, for the trailer park. All
2 right.

3 MR. SILVER: We're happy to submit the additional
4 exhibits, assuming the county will cooperate in providing
5 those. Mrs. Harmon, this morning, made a specific request,
6 as well, for the well registration document and that was not
7 given to her by Mr. Heuberger. Instead, today, even though
8 we made a request yesterday, we suddenly have, now, a
9 November 13th, 2008 letter which refers to this subsequent
10 Imperial Planning Commission review.

11 So, you know, I think that we're happy to provide
12 that, but it may well take the subpoena power of the
13 Committee, and we could address that to the Committee and
14 ask the Committee to obtain this information.

15 HEARING OFFICER RENAUD: That just sounds like a
16 speech, sir.

17 We have your testimony that the current permitted
18 pumping is 40 acre feet. How do you know that?

19 MR. MINNICK: Because I attended the planning
20 commission and prepared the documents.

21 HEARING OFFICER RENAUD: All right.

22 MR. MINNICK: And the planning commission approved
23 it and the board denied her appeal to increase it.

24 HEARING OFFICER RENAUD: Thank you very much.

25 Mr. Budlong and counsel, if you wish to contradict

1 that sworn testimony, which is quite plain, you need to
2 assemble your evidence and testimony and do so, and I sounds
3 like you're not ready to do that today. We can do it at a
4 future session.

5 MR. SILVER: We will do so.

6 HEARING OFFICER RENAUD: Thank you.

7 COMMISSIONER BYRON: Mr. Minnick, since we have
8 you here today, the Committee's typically not interested in
9 all this legal wrangling, we're interested in getting
10 information that's helpful for us in making a decision.

11 Do you have any other information or potential
12 documents that might be of interest in helping us to
13 determine some of the questions that have been raised here
14 today?

15 MR. MINNICK: Not that I'm aware of.

16 COMMISSIONER BYRON: Okay.

17 MR. MINNICK: And like I said at the beginning,
18 these files are off site and it will take some time for us
19 to research us. In trying to help Mrs. Harmon get her
20 information that she needed, we printed this off of our
21 server, which is why it's not signed and on letterhead, and
22 which is why the rest of the record isn't there.

23 Again, we didn't have a context as to what she
24 wanted this for information for.

25 COMMISSIONER BYRON: Well, we have a much better

1 thing here, we have you here. Okay, that's much better than
2 your letter, and your memory and your testimony's very
3 helpful.

4 But I just wanted to make sure that we didn't let
5 you go without asking, is there anything else you'd like to
6 add that you think -- that Mr. Minnick would like to add,
7 that you think might be helpful to this Committee?

8 MR. MINNICK: Not that I'm aware of.

9 COMMISSIONER BYRON: All right, thank you for
10 being here.

11 MS. HOLMES: Staff has questions, if that's
12 acceptable? I'm going to go through the same series of --

13 HEARING OFFICER RENAUD: Let me ask, first, if
14 counsel for Mr. Budlong has further direct questions of Ms.
15 Harmon before we go to cross-examination? You said you had
16 a limited purpose.

17 MR. SILVER: Well, no, we're not -- we're
18 reserving all testimony with regard to the hydrological
19 issues. I have no further questions concerning this letter.

20 HEARING OFFICER RENAUD: Thank you. Cross-
21 examination, first we'll go to Applicant.

22 MS. FOLEY GANNON: I just have one question, Mr.
23 Minnick. With regard to condition use permit 102-73, is
24 that relevant to the use of the Dan Boyer well today?

25 MR. MINNICK: No.

1 MS. FOLEY GANNON: Thank you.

2 HEARING OFFICER RENAUD: Staff?

3 MS. HOLMES: Thank you. Good afternoon, Mr.
4 Minnick. Earlier this afternoon the Applicant's witness
5 testified that they believed that although there is a term
6 for groundwater well registration that requires a flow meter
7 that one was not installed until last week.

8 Do you have any additional information about that?

9 MR. MINNICK: To our knowledge, the conditions had
10 not been met until recently.

11 MS. HOLMES: Thank you. Similarly, do you know
12 whether or not the registered user ever provided written
13 evidence to the planning department that the water meets
14 California Safe Drinking Water standards?

15 MR. MINNICK: Again, to our knowledge, the
16 conditions that we placed upon the project in 2005 have not
17 been adhered to and subsequent Mr. Boyer's purchase of the
18 property. And so, we have not gotten any evidence that the
19 conditions that are attached to the letter have been adhered
20 to.

21 MS. HOLMES: There's also a condition that refers
22 to addressing land use violations, do you know whether or
23 not there have been land use violations associated with the
24 property?

25 MR. MINNICK: Yes.

1 MS. HOLMES: And do you know whether or not they
2 have been abated?

3 MR. MINNICK: My understanding is that the
4 majority of them have been abated and they are still working
5 on abating the rest.

6 MS. HOLMES: Thank you.

7 HEARING OFFICER RENAUD: Cross-examination by
8 CURE?

9 MS. MILES: No, none.

10 HEARING OFFICER RENAUD: Thank you.

11 Mr. Beltran?

12 MR. BELTRAN: No.

13 HEARING OFFICER RENAUD: All right, thank you.

14 Any redirect?

15 MR. SILVER: And you're aware of condition T-9,
16 which says that prior to approval of groundwater well
17 registration by the planning and building department all
18 previous and existing land use violations on the property of
19 water well 11669E must be abated.

20 To the best of your knowledge, were they abated
21 prior to approval of the groundwater well registration?

22 MR. MINNICK: We haven't approved the groundwater
23 well registration.

24 We've approved the conditions of approval to do
25 it. Once they adhere to all the conditions of approval,

1 then they would have the right to use the well for the usage
2 that was permitted by the planning commission in 2005.
3 That's the nature of conditions.

4 MR. SILVER: Well, I guess I'm confused. The
5 letter of November 13th, 2008 says, "On February 23rd, 2005
6 the Imperial County Planning Commission reviewed and
7 approved the water well registration."

8 MR. MINNICK: Subject to the conditions that are
9 attached hereto. Once those conditions are approved, the
10 water well registration goes into effect.

11 MR. SILVER: So, at this present date there is no
12 effective water well registration?

13 MR. MINNICK: That would be true.

14 MR. SILVER: I have no further questions.

15 HEARING OFFICER RENAUD: Okay, any further
16 questions of either witness?

17 MS. FOLEY GANNON: I have one further question.
18 Did we lose everybody?

19 HEARING OFFICER RENAUD: I think we better take a
20 break because we are required to let people listen in on the
21 phone and it appears we've gone off.

22 I suggest, don't even get up, I'm just going to
23 try to re-dial it.

24 (Off the record.)

25 HEARING OFFICER RENAUD: Do you have further

1 questions?

2 MS. FOLEY GANNON: No further questions.

3 HEARING OFFICER RENAUD: No further questions.

4 All right, thank you.

5 Okay. All right, Mr. Budlong, you indicated you
6 have another witness for this topic?

7 MR. SILVER: No, Mr. Budlong was going to give his
8 direct testimony based on his submissions previously to the
9 Commission.

10 HEARING OFFICER RENAUD: Okay, so I would call him
11 a witness.

12 MR. SILVER: All right.

13 HEARING OFFICER RENAUD: But whatever we call him,
14 he should take the stand.

15 Since you're going to be testifying, I think we
16 better swear you in.

17 THE REPORTER: Would you please raise your right
18 hand?

19 Whereupon,

20 TOM BUDLONG

21 was called as a witness herein and, having been first duly
22 sworn, was examined and testified as follows:

23 THE REPORTER: Thank you. And would you please
24 have a state and state your full name for the record, and
25 spell it for me, please?

1 MR. BUDLONG: The name is Tom Budlong and it's T-
2 o-m B-u-d-l-o-n-g.

3 THE REPORTER: Thank you very much.

4 MR. SILVER: So, Mr. Budlong, what is the
5 testimony that you're sponsoring today, could you enumerate
6 your submissions?

7 MR. BUDLONG: I don't know if I understand that
8 question.

9 MR. SILVER: What's the testimony that you're
10 seeking to put into evidence that you have submitted to the
11 Committee in connection with this?

12 MR. BUDLONG: This is dated April 15th, 2010 and
13 it's my opening testimony of my -- on the RETI topics,
14 designated by the Committee's April 8, 2010 hearing notice.

15 MR. SILVER: Okay and what other testimony?

16 MS. HOLMES: Excuse me, could we get an exhibit
17 number? I think Mr. Budlong, similar to the situation with
18 the Applicant, submitted some declarations that were not
19 individually numbered.

20 MR. SILVER: Yes, I don't have numbers here. When
21 we look at Intervenor Tom Budlong exhibits, he made three or
22 four submissions --

23 MR. BUDLONG: Yes.

24 MR. SILVER: -- under oath, which do not appear to
25 have an exhibit number.

1 MS. HOLMES: Right. It seemed to me that the
2 reference documents all have exhibit numbers, but none of
3 the declarations do.

4 MR. SILVER: So, maybe he could enumerate the
5 declarations that you submitted, I think there were three or
6 four, and we can assign them -- hopefully, we can assign
7 them exhibit numbers.

8 HEARING OFFICER RENAUD: We had a gap in your
9 numbers, Mr. Budlong, between 510 and 515. Is that,
10 perhaps, where those were intended to be?

11 MR. BUDLONG: Yeah, I think they'll just fit, I
12 can squeeze them in.

13 HEARING OFFICER RENAUD: Good. So, the first one
14 would be 511.

15 MR. BUDLONG: So, do the April 15th as number 511.

16 HEARING OFFICER RENAUD: And that's your
17 declaration dated April 15th?

18 MR. BUDLONG: Yes, it is.

19 HEARING OFFICER RENAUD: All right.

20 MR. BUDLONG: And that's the one on the RETI
21 topics.

22 The next one would be May 1st, 2010 is the opening
23 testimony for remaining topics, and we can call that 512.

24 I don't know if they're going to fit or not.
25 There's another document, which is opening testimony, dated

1 May 15th, opening testimony of Intervenor Tom Budlong May 24th
2 evidentiary hearing, and that would be 513.

3 HEARING OFFICER RENAUD: I think when we looked at
4 that, Mr. Budlong, we decided it was -- it was really a
5 compilation of what you'd already submitted. But if you're
6 not sure about that, we may as well just mark it.

7 MR. BUDLONG: No, I don't think it is a
8 compilation.

9 HEARING OFFICER RENAUD: All right.

10 MR. BUDLONG: That's in response, partially in
11 response to the Supplemental AFC.

12 HEARING OFFICER RENAUD: All right, fine. Okay.

13 MR. BUDLONG: And I got one more, huh?

14 HEARING OFFICER RENAUD: I think that's just
15 right.

16 MR. BUDLONG: Then we're going to have to go out
17 of sequence.

18 HEARING OFFICER RENAUD: That's right.

19 MR. BUDLONG: Excuse me a moment.

20 MS. HOLMES: Mr. Hearing Officer, what was the
21 date for the 513?

22 HEARING OFFICER RENAUD: May 15.

23 MR. SILVER: I may be mistaken, but did you
24 enumerate four separate documents, 415, 511, 512, and 515?

25 MR. BUDLONG: I think the other two aren't -- the

1 other two that I'm thinking of, I can't find them at the
2 moment, they're in the book here somewhere.

3 HEARING OFFICER RENAUD: All right. Well, let me
4 tell you what I have. I have the 4/15 opening testimony on
5 the RETIs, we've got that as 511. Opening testimony May 1st
6 on the meanings, and then I have opening affirmative
7 testimony on alternatives dated May 10th, which we haven't
8 marked. Is that one of the ones you're looking for?
9 That was submitted, but it has not been made an exhibit.

10 What is it we're looking for exactly, we might be
11 able to just --

12 MR. SILVER: Well, I just want to be sure that all
13 his submissions that were submitted under declaration are in
14 the record. And I thought there were -- I thought you told
15 me last night there were four.

16 HEARING OFFICER RENAUD: Well, we received four
17 and you've listed three, and the last one was the
18 alternatives, which you haven't mentioned, yet.

19 MR. BUDLONG: Yes, yes, okay, I think I've found
20 what I'm looking for.

21 HEARING OFFICER RENAUD: All right.

22 MR. BUDLONG: I have a letter that I sent to
23 Messrs. Byron and Eggert dated May 12th, concerning the
24 Supplemental AFC and in there expressed my doubts as to
25 being able to respond so quickly.

1 Then there is another letter, which is dated May
2 14th, and to give you a sense of the letter it says, "In the
3 day since the filing of the previous letter I've had a
4 little more time to look at it."

5 HEARING OFFICER RENAUD: I'm familiar with it.
6 I'm familiar with both of those letters.

7 MR. BUDLONG: Yes.

8 HEARING OFFICER RENAUD: Do you really want those
9 exhibits as exhibits? They're in the docket?

10 MR. BUDLONG: I guess I would ask your advice and
11 advice of counsel as to whether they should be exhibits or
12 not?

13 MR. SILVER: Well, I would suggest just treating
14 those two letters as one exhibit, A and B.

15 HEARING OFFICER RENAUD: All right.

16 MR. SILVER: Because I think they -- I think they
17 should be in the record.

18 HEARING OFFICER RENAUD: All right, I understand.

19 MR. SILVER: It has to do with the problems
20 relating to responding to the supplement.

21 MR. BUDLONG: There is substance in those letters
22 so --

23 HEARING OFFICER RENAUD: Yeah, I understand.
24 Okay, 514 A and B.

25 MR. SILVER: I believe that fills the gap.

1 HEARING OFFICER RENAUD: The affirmative testimony
2 on alternatives we have, did you wish to enter that?

3 MR. BUDLONG: Yeah, I believe that --

4 HEARING OFFICER RENAUD: Well, that was actually
5 submitted under the name of Edie Harmon for you.

6 MS. HOLMES: There's two additional pieces of
7 testimony by Edie Harmon.

8 HEARING OFFICER RENAUD: Well, we're --

9 MS. HOLMES: That were submitted on behalf of Mr.
10 Budlong, one on May 10th and one on May 17th. We don't have
11 anything for May 15th or May 10th.

12 MR. SILVER: Well, yeah, I don't know what the
13 protocol is. Mr. Budlong is the Intervenor, should he be at
14 this point also asking for the submission into evidence of
15 his witness, Mrs. Harmon, or would it be appropriate to do
16 that when she testifies later with respect to hydrological
17 issues?

18 HEARING OFFICER RENAUD: To the extent she's
19 submitted written testimony, that should be entered into
20 evidence as soon as possible and I would think now's the
21 time to do that.

22 So, we have opening testimony of her, dated May
23 10th.

24 MS. HOLMES: Is that Exhibit 514?

25 MR. BUDLONG: No.

1 HEARING OFFICER RENAUD: We'll call that, we'll
2 make that the next in order.

3 MR. BUDLONG: It's up in the 560s.

4 HEARING OFFICER RENAUD: Yeah, so we'll call
5 that --

6 MR. BUDLONG: Edie, what's your last exhibit
7 number and we'll go on from there?

8 MR. SILVER: The last exhibit number appears to be
9 561, so this would be -- we would move into --

10 MS. HOLMES: We had 565 was the letter.

11 HEARING OFFICER RENAUD: I know. Let's try not to
12 all talk at once, but let me speak up here.

13 Ms. Harmon, you made the one you did submit 565
14 because you had three previous. Do those include your
15 testimony, your affirmative testimony?

16 MS. HARMON: No.

17 HEARING OFFICER RENAUD: All right.

18 MS. HARMON: I mean those were separate and
19 these --

20 HEARING OFFICER RENAUD: All right, all right. So
21 the document we're talking about, the May 10th affirmative
22 testimony of Edie Harmon we'll make 566.

23 MR. SILVER: Okay, we would move that into
24 evidence as well.

25 HEARING OFFICER RENAUD: Any objection?

1 That will be admitted.

2 MR. SILVER: Then we have her submission, I think
3 dated 5/17.

4 MR. BUDLONG: Yes.

5 HEARING OFFICER RENAUD: That will be 567. Any
6 objection to that being admitted into evidence?

7 MS. HOLMES: No.

8 HEARING OFFICER RENAUD: No objection, it's
9 admitted.

10 And that's it, right?

11 MR. SILVER: Yes.

12 HEARING OFFICER RENAUD: All right. All right, is
13 there further testimony from Mr. Budlong?

14 MR. SILVER: Yes, there is. So, Mr. Budlong,
15 would you state your qualifications for the record?

16 HEARING OFFICER RENAUD: Are you seeking to have
17 Mr. Budlong testify as an expert?

18 MR. SILVER: Well, he has -- in this proceeding,
19 he has a background as a mechanical engineer and --

20 HEARING OFFICER RENAUD: I guess the question, I
21 really only ask for a yes or no answer, are you looking to
22 have him admitted as an expert witness for opinion
23 testimony?

24 MR. SILVER: Yes.

25 HEARING OFFICER RENAUD: Thank you. Please

1 proceed.

2 MR. BUDLONG: I have a degree in mechanical
3 engineering from MIT. I've worked in mechanical engineering
4 business in the aerospace industry for a number of years.
5 Moved over into the computer business and was a participant
6 in several entrepreneurial exercises for a while, about
7 three of those things.

8 And subsequently decided to do my own thing and
9 earn my own living, so I'm now, I guess you could say, an
10 independent lender to real estate.

11 COMMISSIONER BYRON: And, Mr. Budlong, would you
12 care to tell us how long you've been a practicing mechanical
13 engineer?

14 MR. BUDLONG: I was a practicing mechanical
15 engineer for something like 10 to 15 years.

16 COMMISSIONER BYRON: Oh, I was hoping we'd see a
17 much bigger number than that, just to see if --

18 (Laughter.)

19 MR. BUDLONG: I could have gone for 50, but not
20 60, I'm sorry.

21 MR. SILVER: And could you describe any experience
22 you've had with technological startups in terms of assisting
23 in the financing or assessing the risks of those
24 enterprises?

25 MR. BUDLONG: Well, I was involved in a startup

1 and I was not part of the initial part that put it together,
2 but I certainly came in shortly after it got put together,
3 and was involved in getting the company to do and making it
4 move.

5 I was in charge of product planning and we were
6 making early calculators and word-processing computers. I
7 was doing a lot of the planning and a lot of the
8 programming, managing programmers, let's put it that way, I
9 wasn't doing the programming.

10 We competed with Bill Gates for a while, but he
11 was smarter than we were, so we went on and made software
12 with another company. And so we started that company and
13 made a moderate success after that one. And after a while I
14 decided to go off on my own.

15 MR. SILVER: That's the extent of my questioning
16 with regard to his qualifications.

17 HEARING OFFICER RENAUD: And his testimony subject
18 would be?

19 MR. SILVER: His testimony subject will be
20 primarily with regard to the economic viability of the
21 project and calculations with regard to, for example, what
22 energy it consumes as opposed to what it produces and energy
23 budget.

24 HEARING OFFICER RENAUD: All right, thank you.
25 Anything else or is that it?

1 MR. SILVER: He will also testify concerning
2 whether or not to what extent this is supposedly a 750
3 megawatt project.

4 HEARING OFFICER RENAUD: All right.

5 MR. SILVER: So, it will be addressed to energy
6 efficiency and energy production.

7 HEARING OFFICER RENAUD: All right. Is there any
8 voir dire on the witness's qualifications?

9 MS. FOLEY GANNON: No, thank you.

10 HEARING OFFICER RENAUD: Anybody, any objection to
11 his being admitted as an expert?

12 MS. MILES: No.

13 MS. HOLMES: None.

14 HEARING OFFICER RENAUD: Any objection?

15 All right, we'll admit him.

16 Congratulations.

17 (Laughter.)

18 MR. BUDLONG: My question, my observation is I
19 haven't seen in any of the documentation, certainly not in
20 the staff assessment, the DEIR, an economic analysis of this
21 project. I can't see where there is any evidence that this
22 is, indeed, an economically viable or an economically
23 unviable project because I've seen no evidence that there is
24 any economic analysis at all.

25 COMMISSIONER BYRON: And, Mr. Budlong, I won't be

1 the one that will cut you off, but let me try and answer as
2 to why you don't see that information from the Commission's
3 perspective.

4 And it's frustrating to me, as well, so I'll start
5 from that point.

6 If you understand our responsibilities in the
7 statute, we really don't look at the economic viability of a
8 project. These projects come to us, typically, after having
9 received a power purchase agreement, but not necessarily,
10 from a buyer of their power. They've done that due
11 diligence, they've done that evaluation through usually a
12 competitive solicitation.

13 We don't participate in that process. In this
14 case, an investor-owned utility, I understand, is
15 contracting to buy this power, so that's gone through
16 procurement review groups and it's been approved by the
17 Public Utilities Commission as being a -- I don't know if
18 I'm using the right phrase, but a just and reasonable cost.

19 There are people here that understand this stuff a
20 lot better than I do.

21 I'm very interested in the economics of it, but it
22 really doesn't have any bearing on our decision here today,
23 nor the evidence that we're pulling together to make that
24 decision.

25 MR. BUDLONG: Well, I looked through the Draft

1 Environmental Impact Statement, the staff assessment, we'll
2 call it the staff assessment, and I see numerous references
3 to cost. And if you're not interested in cost, if you're
4 not concerned with that, then why are those in there?

5 I see such things as, well, for instance, NEPA,
6 which I understand you're California and not NEPA. Now,
7 NEPA says you have to consider economic considerations in
8 these things.

9 I see when you do alternatives analysis, economic
10 comparison is required and that occurs in NEPA, also.

11 I see a statement that says, "The Energy
12 Commission has developed the following objectives for the
13 project," and I'm quoting now, "One, to safely and
14 economically construct and operate a 750-megawatt facility
15 and being able to sell competitively priced renewable
16 energy."

17 Now, this comes from the Energy Commission,
18 itself, and if the Energy Commission is not interested in
19 the economics of the situation, then those statements should
20 not be there.

21 HEARING OFFICER RENAUD: May I ask you a question?

22 MR. BUDLONG: Yes.

23 HEARING OFFICER RENAUD: So we sort of make this a
24 conversation. Where you just read about the Energy
25 Commission's objectives, what section of the --

1 MR. BUDLONG: On page A-11.

2 HEARING OFFICER RENAUD: All right. Are you sure

3 that's not in the AFC?

4 MR. BUDLONG: Yes, that's the DEIS.

5 HEARING OFFICER RENAUD: All right.

6 MR. BUDLONG: So, if we have that there, we can

7 look at it.

8 HEARING OFFICER RENAUD: I believe Mr. Meyer might

9 have been the author of that section.

10 MR. MEYER: I was the joint author with the BLM

11 and I'm only taking account of the stuff that's right.

12 (Laughter.)

13 HEARING OFFICER RENAUD: All right. Well, I think

14 Mr. Meyer may have been responsible, in general, for

15 drafting sections of various staff assessments that talk

16 about the project objectives.

17 MS. HOLMES: Typically, that's -- let me offer, as

18 a brief explanation, the following statement. When staff

19 performs its alternatives analysis one of the things that it

20 does is review the application for certification. And we do

21 not generally accept, verbatim, the project applicant's

22 purpose and objective, we come up with our own. It's based

23 on what they have had to say, we're looking to make sure

24 that the statement of purposes needed, as it's called in

25 NEPA, the project objectives, as it's called in CEQA, are

1 not artificially constrained.

2 And staff did do that in this case. The staff
3 witnesses on alternatives, Susan Lee, who is not here today
4 because alternatives is one of the topics we are not
5 addressing, working to developed the objectives that you see
6 in the introduction.

7 So, although it's included in Mr. Meyer's
8 testimony, the person who actually developed that and who
9 could speak to how it was developed is Susan Lee, who will
10 be here when we hold the subsequent hearing.

11 HEARING OFFICER RENAUD: Thank you. What I had in
12 mind was that perhaps Mr. Meyer can enlighten us on the
13 purpose for including the term -- such terms as
14 "economically" in the project objectives and elsewhere in
15 the staff assessment.

16 Because the question really seems to be whether or
17 not that pertains to the business viability of the project
18 versus economic concerns over the costs of mitigating
19 impacts, the costs of other alternatives, that kind of
20 things.

21 MR. MEYER: As Commissioner Byron pointed out,
22 we're not looking at the economic viability of the project,
23 itself. But when we're looking at the development of either
24 mitigation or alternatives economics is a consideration,
25 where we're not looking at something that would fully

1 mitigate the project, but with staff knowing that that
2 mitigation would make -- would be so untenable by the
3 applicant as to make the project unpalatable.

4 So, we do focus on the economics of the
5 alternatives, the mitigation, but we're not looking at the
6 viability of the project as proposed.

7 In our analysis of components of the project we
8 look at if what we're -- excuse me, let me rephrase that.

9 If we're looking at proposing an alternative, you
10 know, whether it's a smaller or different site that has
11 different costs associated with it, you know, we try to be
12 reasonable about that.

13 And it is a little bit of an art, rather than a
14 science on that, because we haven't done an economic
15 analysis of the project, itself.

16 COMMISSIONER EGGERT: And I wonder if maybe -- and
17 I'll ask the Hearing Officer to stop me if I'm saying
18 something that's incorrect.

19 But I think the Energy Commission is very much
20 interested in the economic development of renewable energy
21 in the State of California as kind of a broad policy goal.
22 And I think what you're hearing is about to what extent it
23 pertains to the process we're involved in and whether or not
24 economic viability of a particular technology is a component
25 of the CEQA analysis.

1 But, certainly, we have a deep interest in the
2 economic viability of renewable energy and the various
3 technologies that are being employed to achieve our
4 renewable goals.

5 And we fund a great deal of research through our
6 Public Interest Energy Research Program to help facilitate
7 the further development of these technologies to make them
8 more economically viable, if you might.

9 So, I don't know if that addresses your question?

10 MR. BUDLONG: That's a little higher plane than
11 we're talking on here. We're talking about a specific
12 project here, rather than the entire general subject of
13 renewable energy.

14 I would submit that, indeed, you are interested in
15 the economic viability of it because if it's not
16 economically viable, the project is likely to fail and you
17 end up with ten square miles of essentially junk. And it's
18 vital that that not happen.

19 And fundamental to this project is its economic
20 viability. If it's economic viability goes away, you don't
21 have a project anymore. If it starts losing money and
22 Tessera has to start writing a check every day in order to
23 keep it operational, they're eventually going to go away and
24 you're left with, like I say, ten square miles of junk.

25 HEARING OFFICER RENAUD: All right. The point of

1 this entire discussion is to determine whether or not the
2 subject you've just introduced has a bearing or an assist
3 the Committee in making its decision.

4 You've pointed out that there isn't any economic
5 viability chapter anywhere and that's because that's not
6 something the Commission looks at.

7 And so, I think the obvious response is that your
8 testimony, as much as it would be interesting, wouldn't have
9 a bearing on the Commission decision.

10 Nonetheless, but it is the type of thing that we
11 might be interested to hear as public comment.

12 Having said that, let me ask, first, how much time
13 do you think you'll need for your economic viability stuff?

14 MR. BUDLONG: As long as it takes to argue this
15 out. My point is I think you -- economic viability is an
16 interesting question.

17 HEARING OFFICER RENAUD: I know, but I asked you
18 how much time.

19 MR. BUDLONG: I don't have -- I don't intend to
20 work out economic viability this afternoon, certainly not,
21 that's a much bigger thing.

22 HEARING OFFICER RENAUD: If it's a few minutes --
23 our time is precious and if it's a few minutes, you know,
24 it's easier to just have you do it than discuss it further.

25 If it's a long presentation, I think the Committee

1 would have to decide whether or not to go on.

2 MR. BUDLONG: No, I don't have anything that's
3 going to go on for a while. I'd like to point out that
4 there are many places in the document where it talks about
5 economics. And I don't want to get into the alternatives,
6 because we're not talking about it, but in the alternative
7 sections it says this one we -- it would cost us more, and
8 that's all it says is cost, it's not quantitative, it's
9 qualitative.

10 HEARING OFFICER RENAUD: Let me confer with the
11 Presiding Member. I'll confirm with the Presiding Member.

12 Yes, we've conferred and what we'd like to do is
13 allow you to proceed for a limited time, and please keep it
14 limited to ten minutes.

15 MR. BUDLONG: Yeah, on the economics part and then
16 we've got a couple more things.

17 HEARING OFFICER RENAUD: Of course. Yes, thank
18 you.

19 MR. BUDLONG: Yeah, I really think there's nothing
20 more, I think I've said my piece. And my piece is that,
21 yes, I think you are interested in the economic viability.
22 This is an environmental impact statement and those ten
23 square miles are absolutely destroyed for no purpose if the
24 project loses its economic viability.

25 COMMISSIONER BYRON: And I've got that. I've got

1 that, Mr. Budlong, and I think you heard me ask some
2 questions with regard to that, yesterday, as well.

3 MR. BUDLONG: Okay. That's it for economics.

4 MR. SILVER: Let's also just jump to the topic,
5 for just a minute, of what are your views concerning the
6 characterization of the project as a 750-megawatt project?

7 MR. BUDLONG: Yeah, my problem there is that
8 throughout the documentation it talks about a 750-megawatt
9 project and in three places in the document I found where it
10 talks about the actual energy that's coming out of it on an
11 annual basis, which is labeled as -- which is quantified as
12 1,620,000 megawatt hours per hour. I found that in three
13 places and I did it by searching for one million. I found
14 it once and then I searched 1,620,000.

15 Now, if you divide it by the number of hours in a
16 year, you find out what the average megawatt is, megawatts
17 coming out this and it comes out to be 187 thereabouts, not
18 750.

19 So, when someone says you're getting -- this is a
20 750-megawatt project, no, it's not, it's a 187-megawatt
21 project.

22 Now, I think probably most people in this room
23 understand the difference. The difference is the sun
24 doesn't shine at night, et cetera, and 750 is the maximum
25 power rate that comes out of it when the sun is shining on a

1 nice, hot day in the summertime.

2 However, that characterization of the project at
3 750-megawatts tends to almost become a name for the project.
4 And where you see this is in proclamations to the public,
5 for instance. You see it in the BLM press release,
6 announcing that there is this project and it's a 750-
7 megawatt project.

8 And when the public gets a hold of that, they look
9 at that and they say, well, a little bit more on this thing
10 and we've replaced the 1,000-megawatt coal-fired power
11 plant, which is the wrong impression, and environmental
12 impact statements aren't supposed to do that.

13 Now, the documentation does, every now and then,
14 qualify the 750-megawatts by using the word "nominal" or
15 "net" or "capacity."

16 And I submit that both nominal and net are just
17 plain wrong. Net is, well, by potato chips and the bag is
18 half empty. On the outside it tells you how much is in
19 there, not how much it could be in there.

20 Net is just plain wrong.

21 If you look up nominal in the dictionary, it's
22 also just plain wrong.

23 Capacity is not wrong, but it takes a very
24 perspective reader to understand the word "capacity" and
25 what that really means, and most of the proclamations in

1 many places it doesn't mention capacity at all.

2 And my feeling is that that 750 number you're
3 using, you're fooling an awful lot of people and that's not
4 the purpose of an environmental impact statement, it's
5 supposed to be clear.

6 Now, as far as fooling people is concerned, it
7 even gets down to fooling the authors of the document.
8 Because if you look in the alternatives section, you'll find
9 a couple of alternatives where the alternative has to
10 generate a full 750 average all year long, minus probably
11 maintenance, ten percent, something like that, with a 90
12 percent capacity factor.

13 Biomass is that way and geothermal is that way.

14 So, even the authors of the alternatives section
15 got fooled by this 750-megawatt number.

16 HEARING OFFICER RENAUD: All right, is that the
17 end of that particular topic?

18 MR. BUDLONG: Not unless you want to talk about it
19 some more.

20 HEARING OFFICER RENAUD: The 750?

21 MR. BUDLONG: Yeah.

22 HEARING OFFICER RENAUD: But your point is -- I
23 think you've made your point.

24 MR. BUDLONG: Yeah.

25 HEARING OFFICER RENAUD: Okay. I think it would

1 be most efficient to ask if anyone wishes to cross-examine
2 you on that particular point?

3 MS. FOLEY GANNON: No questions.

4 MS. HOLMES: Staff has one question.

5 HEARING OFFICER RENAUD: Please?

6 MS. HOLMES: Mr. Budlong, would your concern be
7 addressed if staff were to talk about energy in addition to
8 capacity, so, for example, if we were to talk about megawatt
9 hours that we would expect to be produced as opposed to
10 megawatts?

11 MR. BUDLONG: Yeah, you know, if you ask -- go out
12 in the street and ask people if they know the difference
13 between a watt and a watt hour, you're not going to get the
14 right answer very often. It's a difficult subject.

15 I think, my personal opinion, is an introduction
16 to that question would be of interest, and then
17 characterizing the project, whenever you talk about it, as
18 either 187, which is what you get out of it over a year or,
19 indeed, talking about the megawatt hours, I think that would
20 solve the problem.

21 The problem with megawatt hours is that that's not
22 the way the world talks with all the rest of the projects,
23 so it doesn't really fit in with the rest of the world, but
24 187 would.

25 MS. HOLMES: Thank you.

1 HEARING OFFICER RENAUD: Any other cross-
2 examination?

3 All right, you can proceed with your direct on
4 another topic.

5 MR. SILVER: All right. Mr. Budlong, I think your
6 third topic is what is your opinion re the documentation, if
7 any, with respect to a kind of net energy analysis?

8 MR. BUDLONG: Yeah, nor could I find in the
9 documentation a net energy analysis. They're going to be
10 working, putting this thing together for 40 months, I think
11 something like that, driving big machines around, melting
12 mirrors and gluing them onto base plates, and making
13 SunCatchers, and all that takes a lot of energy. And it
14 takes energy to run the thing when you get operational, and
15 it takes energy to drive the electricity to market through
16 the wires.

17 What I've not seen is an analysis of how much
18 energy you get out of it compared to how much energy you put
19 in it in order to make it and run it. I don't even know if
20 it comes out positive. It may take more energy to put the
21 thing together and run it than you get out of it.

22 We can all make a guess about whether that comes
23 out positive or negative, but those are only guesses and
24 they have no validity.

25 And I think this is called lifecycle analysis,

1 where you analyze how much energy do you put into making it.
2 And that involves not only the diesel that you put into the
3 machines driving around and carrying the SunCatchers here
4 and there, but how much energy it puts into making those
5 machines for their wearing out, you're using part of their
6 limited life, sooner or later you're going to have to make a
7 new machine, a new diesel truck to drive around, energy for
8 commuting people, digging the glass out of the ground and
9 melting it into the mirrors. I think that's called
10 lifecycle analysis.

11 And it would be, I think, instructive and almost
12 necessary to determine how much positive energy do you get
13 out of this? What is the energy return on investment? The
14 energy return on investment of oil these days is, I don't
15 know, ten to one. You spend a gallon of gasoline in order
16 to get ten gallons of gasoline, maybe something like that.

17 I've heard rumors that ethanol is actually
18 negative, but that's only rumors.

19 But that's the kind of number that I should think
20 would be interesting in this situation and we don't know the
21 answer.

22 We may be very close to break even, we don't know.

23 HEARING OFFICER RENAUD: Thank you. Okay, I think
24 we understand your position.

25 MR. BUDLONG: And I think it's common to know that

1 kind of a thing.

2 HEARING OFFICER RENAUD: Yeah, so that's not in
3 there, in the analysis.

4 MR. BUDLONG: Right.

5 HEARING OFFICER RENAUD: Okay, cross-examine?
6 Or, no, Commissioner.

7 COMMISSIONER EGGERT: Actually, I do have a
8 question for the Applicant, which is not as expansive as I
9 think you're suggesting with respect to lifecycle analysis,
10 but is there an estimate of the sort of net capacity at the
11 plant gate, accounting for parasitics?

12 So in other words, at sort of the nominal net, or
13 is that something that could be provided? It would be a
14 curiosity. And that's accounting for any sort pumping
15 losses, or compression losses, or things like that.

16 MR. VAN PATTEN: The plant output? Can I offer
17 this answer? Under this --

18 HEARING OFFICER RENAUD: Just for the record,
19 let's make it clear who's speaking, it's Marc VanPatten.
20 You're still under oath.

21 MR. VAN PATTEN: This is Marc VanPatten. We do
22 have that estimate. The amount of energy, in megawatt
23 hours, that we're putting in the documents is the net
24 megawatt hours that will hit the grid. When we come up with
25 that number, we're actually taking the capacity of each

1 SunCatcher, at 25 kilowatts each, operating as many hours as
2 we anticipate it will based on NREL data, taking it through
3 the losses that it might see, for instance wind losses, days
4 that are going to be less sunny than others and all the, you
5 know, NREL based information to come up with the energy net
6 of losses onto the grid.

7 COMMISSIONER EGGERT: And that's the 1,620,000?

8 MR. VAN PATTEN: That's correct.

9 MR. THOMPSON: And for the benefit of Commissioner
10 Byron, end run -- NREL means?

11 MR. VAN PATTEN: National Renewable Energy
12 Laboratories.

13 COMMISSIONER BYRON: Just so we get back to Mr.
14 Budlong, we understand your point, though, is with regard to
15 lifecycle analysis of the equipment, so we understand your
16 point.

17 MR. BUDLONG: Okay.

18 HEARING OFFICER RENAUD: All right, anything
19 further, Mr. Budlong?

20 MR. BUDLONG: No, not for me. Any cross?

21 HEARING OFFICER RENAUD: Any further questions of
22 Mr. Budlong?

23 MS. FOLEY GANNON: No questions, thank you.

24 HEARING OFFICER RENAUD: Anybody?

25 MS. MILES: No questions.

1 HEARING OFFICER RENAUD: All right, thank you,
2 sir, we appreciate your testimony.

3 MR. BUDLONG: And I made your time limit.

4 HEARING OFFICER RENAUD: You did fine, thank you
5 very much.

6 MR. BUDLONG: Thank you.

7 HEARING OFFICER RENAUD: All right. Is there
8 anyone, any part here today who has a witness that they'd
9 like to put on before we close? Yes?

10 MS. FOLEY GANNON: We still have two more
11 witnesses we have not gotten to, yet.

12 HEARING OFFICER RENAUD: I'm sorry?

13 MS. FOLEY GANNON: We have two more witnesses we
14 had not gotten to, yet.

15 HEARING OFFICER RENAUD: All right, let's --

16 MS. HOLMES: And staff has Mr. Meyer.

17 HEARING OFFICER RENAUD: All right.

18 MR. THOMPSON: Oh. Well, we're going to go all
19 night then.

20 (Laughter.)

21 MS. HOLMES: Keep your questions short.

22 HEARING OFFICER RENAUD: Your call.

23 MS. FOLEY GANNON: We'll call Carolyn Dunmire.
24 She will be testifying, she was both a sponsor for
25 alternatives and for cumulative analysis.

1 THE REPORTER: Could you please raise your right
2 hand?

3 Whereupon,

4 CAROLYN DUNMIRE

5 was called as a witness herein and, having been first duly
6 sworn, was examined and testified as follows:

7 THE REPORTER: Thank you very much. Would you
8 please state your name, over there with the microphone,
9 state your full name and also, if you would, spell your name
10 for me, too?

11 MS. DUNMIRE: My name is Carolyn Dunmire, C-a-r-o-
12 l-y-n D-u-n-m-i-r-e.

13 THE REPORTER: Thanks.

14 MS. FOLEY GANNON: Good afternoon, Ms. Dunmire,
15 and thank you for missing your plane back to Colorado to
16 stay and testify for us. The rest of us are hoping that we
17 make planes this evening. But we appreciate the fact that
18 you were able to stay.

19 Are you the same person who provided testimony in
20 this proceeding previously, which is now currently marked as
21 Exhibit 100?

22 MS. DUNMIRE: Yes, I am.

23 MS. FOLEY GANNON: And do you have any corrections
24 or additions you would like to make to that testimony?

25 MS. DUNMIRE: Yes, I have one correction. Exhibit

1 6 is labeled "Data Adequacy Request One." It needs to have
2 addition to that "BLM Responses 48 to 52."

3 COMMISSIONER BYRON: Ms. Dunmire, is your
4 microphone on and could you put it a little closer, please?

5 MS. DUNMIRE: Let me double check there.

6 MS. FOLEY GANNON: It just wasn't there, yeah.

7 MS. DUNMIRE: I wasn't close enough. Is that
8 better?

9 MS. FOLEY GANNON: Much better.

10 MS. DUNMIRE: Do I need to repeat that? So, on
11 Exhibit 6, it should be "Data Adequacy Response One, BLM
12 Responses 48 through 52."

13 MS. FOLEY GANNON: We ask that her testimony,
14 Exhibit 100, be admitted into evidence.

15 HEARING OFFICER RENAUD: It sounds like that's
16 part of the AFC.

17 MS. FOLEY GANNON: No, the Exhibit 100 was her
18 previous, was her opening testimony.

19 HEARING OFFICER RENAUD: Oh, 100. I'm sorry, not
20 one, 100.

21 Fine, thank you. Is there any objection?

22 MS. HOLMES: No objection.

23 MS. MILES: No.

24 HEARING OFFICER RENAUD: All right, that will be
25 admitted, thank you.

1 MS. FOLEY GANNON: Thank you.

2 If you can briefly describe the alternatives
3 analysis, which was completed by the Applicant as part of
4 the AFC, and also as reflected by the draft staff
5 assessment, draft EIS?

6 MS. DUNMIRE: Sure. The alternatives analysis in
7 the draft -- the staff assessment and the AFC covers a
8 reasonable range of alternatives.

9 We looked at everything from zero megawatts to 900
10 megawatts and several different off-site alternatives.

11 The analysis of these range of alternatives was
12 thorough across the different documents. So, if you look
13 across the AFC, the data responses, and then the draft EIS
14 staff assessment.

15 Some of the alternatives that were reviewed
16 include on-site arrangements, including zero megawatts or no
17 action, 300 megawatts, 900 megawatts, 750 megawatts, as well
18 as two LEDPA, or least environmentally practicable
19 alternatives.

20 COMMISSIONER BYRON: Thank you.

21 MS. DUNMIRE: You're welcome. And six off-site
22 alternatives, including one alternative that was identified
23 by the public, in public comment, the Mesquite Lake
24 alternative.

25 And also, there were several configurations of

1 alternatives considered with respect to the BLM, because
2 there is a land amendment associated with that, so they
3 looked at alternatives of approval or non-approval of the
4 land amendment for the California Desert Conservation area.

5 MS. FOLEY GANNON: Good, you got through all the
6 letters and that acronym.

7 And I think you testified to this previously, but
8 in your professional opinion is this a reasonable range of
9 alternatives to allow the Commission to consider the
10 potential environmental impacts associated with this
11 project?

12 MS. DUNMIRE: Yeah, I think it's a reasonable
13 range. And in addition to all the on-site/off-site land
14 amendments, there were also other technologies that were
15 evaluated through the staff assessment. And I think across
16 the board, and I think the staff assessment does the best
17 summary of the analysis, there has been a thorough analysis
18 of each of these alternatives.

19 MS. FOLEY GANNON: You made reference, earlier, to
20 the least environmentally damaging practicable alternative,
21 and I think at that point you were actually referencing what
22 is called in the staff assessment drainage avoidance one and
23 drainage avoidance two; is that correct?

24 MS. DUNMIRE: That's correct, yes, that is the
25 drainage avoidance one and drainage avoidance two

1 alternatives were I think a draft, an idea, a consideration
2 of what the least environmentally damaging practicable
3 alternative might be, so you might see both acronyms there,
4 drainage avoidance and LEDPA.

5 MS. FOLEY GANNON: And I believe you were here
6 yesterday when we had some discussions about the further
7 analysis which has been undertaken by the Applicant, and in
8 connection with discussions with the Corps in the EPA about
9 other ways that may be implemented to further reduce the
10 impacts to aquatic resources associated with the project.
11 Do you recall that testimony?

12 MS. DUNMIRE: Yes, I do.

13 MS. FOLEY GANNON: And is it your opinion -- or
14 what is your opinion, I'll let you say it yourself, what is
15 your opinion as to the impact of the alternate
16 identification of the least environmentally damaging
17 practicable alternative on the adequacy of the alternatives
18 analysis, which is include in the staff assessment?

19 MS. DUNMIRE: Like I said at the beginning,
20 there's a wide range and a reasonable range of alternatives
21 that have been reviewed and thoroughly analyzed.

22 It's likely that the least environmentally
23 damaging practicable alternative, identified through the
24 clean water process, will fall within that range. And so,
25 while it may be different than one of the alternatives there

1 now, it's likely to be within the range that has already
2 been analyzed and will probably have impacts sort of between
3 two of the alternatives already identified.

4 MS. FOLEY GANNON: And in terms of practicability,
5 as that is used in the least environmentally damaging
6 practicable alternative, can you speak to that and then also
7 speak to, briefly, how that relates to evaluation of
8 alternatives as part of NEPA/CEQA?

9 MS. DUNMIRE: Sure. One thing that's difficult,
10 that's been -- the reason why there's such a wide range of
11 alternatives, and so many numbers, and kind of these strange
12 combinations is because we're looking at the alternatives
13 from, really, three different regulatory regimes. We've got
14 CEQA, we've got NEPA and now we've got the Clean Water Act.

15 COMMISSIONER BYRON: Well, and just for the
16 benefit of --

17 MS. DUNMIRE: Sure.

18 COMMISSIONER BYRON: -- you know, those who don't
19 know all these acronyms, it's always good for us that we
20 spell them out the first time, so the code is broken.

21 MS. DUNMIRE: Okay. CEQA is California -- help me
22 out here?

23 MS. FOLEY GANNON: Environmental Quality Act.

24 MS. DUNMIRE: Environmental Quality Act. NEPA,
25 National Environmental Policy Act. And Clean Water Act.

1 And so, there's kind of three different regulatory
2 regimes. And each, there's subsets of alternatives that
3 were evaluated under each of these different regimes.

4 So, you've got the CEQA alternatives, which have
5 one view, NEPA has another view and now, under the Clean
6 Water Act and the idea of this least environmentally
7 damaging practicable alternative you're focusing on aquatic
8 resources, but it has to be a practicable alternative.

9 And in that language, the guidance there says for
10 an alternative to be practicable, it has to be available and
11 capable of being done.

12 So, you're introducing the concept that you're
13 considering cost, technical feasibility and logistics, so it
14 kind of adds more to the mix.

15 Those alternatives and criteria are being
16 analyzed, now, in the requirements for the Clean Water Act
17 permitting, but they're not likely to be much different than
18 the alternatives already reviewed, and likely to have fewer
19 impacts, particularly to aquatic resources than, say, the
20 current project description.

21 MS. FOLEY GANNON: And speaking, again, of what
22 practicability means, I appreciate that the regulations
23 provide available and capable of being done, and it has
24 these criteria, but it might be helpful, from one who has
25 done this analysis in the past, to give us sort of a

1 layman's version of what does practicability mean on the
2 ground?

3 MS. DUNMIRE: Sure. Kind of the way that I look
4 at it is if the developer, the Applicant, were granted a
5 permit would they build it, so that the -- and this was
6 raised earlier about, you know, avoiding onerous mitigation.
7 If you're requiring the applicant to create a project that
8 is logistically impractical to operate or maintain, or if
9 the mitigation requirements increase the cost of the project
10 so much that they cannot make -- you know, be profitable or
11 build the project, that's somewhat of the concept behind the
12 practicability.

13 Again, cost is not a primary condition here. I
14 mean, across the board, all of these different regulations
15 say that you're supposed to look at the alternatives without
16 primary consideration for cost.

17 However, the concept of practicability introduces
18 things like technical cost and logistics as a consideration
19 for whether you would build the project.

20 MS. FOLEY GANNON: And in your experience, is the
21 least environmentally practically damaging alternative -- it
22 just rolls off the tongue, doesn't it?

23 Can I please say LEDPA, now that we've said it
24 like a bunch of times?

25 HEARING OFFICER RENAUD: We can say LEDPA now,

1 yeah, LEDPA.

2 MS. FOLEY GANNON: Thank you. Is the LEDPA
3 frequently identified at the draft NEPA/CEQA document?

4 MS. DUNMIRE: In my experience usually know, and
5 it often is completed even after a final has been
6 identified. Generally, because you're looking at least
7 environmentally damaging and especially with a focus on
8 aquatic resources, often the project is restricted even more
9 or more mitigation is required than what has been identified
10 in the, say, final EIS or other equivalent documents.

11 MS. FOLEY GANNON: And in your opinion would, in
12 this case, given the level of information that has been
13 developed as part of the LEDPA analysis that's committed to
14 date and submitted for the Commission, do you think that --
15 do you anticipate that the identification of a LEDPA here
16 would require additional substantive analysis in order for
17 CEQA to be complied with an in order for the Commission to
18 make a decision regarding the potential impacts associated
19 with this project?

20 MS. DUNMIRE: No, I don't think. I mean, I think
21 the range of alternatives have been reviewed, the analysis
22 has been thorough. It's very likely that the LEDPA will
23 fall within that current range. And so I don't think that
24 further analysis is required at this point.

25 MS. FOLEY GANNON: Thank you.

1 Ms. Dunmore also submitted written testimony on
2 the cumulative analysis which has been done. I don't have
3 any direct questions for her on that, but I will submit her
4 for cross-examination on either the alternatives or the
5 previously written testimony that she has submitted in this
6 matter.

7 HEARING OFFICER RENAUD: All right, staff, cross-
8 examination?

9 MS. HOLMES: No questions.

10 HEARING OFFICER RENAUD: All right, CURE.

11 MS. MILES: No questions?

12 HEARING OFFICER RENAUD: Mr. Budlong?

13 Mr. Beltran?

14 MR. BELTRAN: No questions.

15 HEARING OFFICER RENAUD: All right, thank you.

16 MS. FOLEY GANNON: We should have done you
17 earlier.

18 HEARING OFFICER RENAUD: All right, and call your
19 next witness.

20 MS. FOLEY GANNON: All right, thank you.

21 HEARING OFFICER RENAUD: Unless the Commissioners
22 have questions?

23 COMMISSIONER BYRON: Well, I would just like to
24 point out that alternatives is still very open and we'll be
25 addressing it in more detail in a future hearing.

1 HEARING OFFICER RENAUD: All right.

2 MS. FOLEY GANNON: And our final witness will be
3 Rebecca Apple. Almost final witness, the final witness I'm
4 going to call.

5 THE REPORTER: Would you raise your right hand,
6 please?

7 Whereupon,

8 REBECCA APPLE

9 was called as a witness herein and, having been first duly
10 sworn, was examined and testified as follows:

11 THE REPORTER: Thank you very much. Would you
12 please take a seat, please state your full name for the
13 record and spell it for me, please?

14 MS. APPLE: Rebecca Apple, R-e-b-e-c-c-a A-p-p-l-
15 e.

16 THE REPORTER: Thank you.

17 MS. FOLEY GANNON: Good afternoon, Ms. Apple. Are
18 you the same person who submitted earlier in these
19 proceedings, which is now marked as Exhibit 111 and you had
20 supplemental testimony that was dated May 10th, and is now
21 marked as Exhibit 115?

22 MS. APPLE: Yes.

23 MS. FOLEY GANNON: Do you have any corrections or
24 additions to make to that earlier written testimony?

25 MS. APPLE: No, I do not.

1 MS. FOLEY GANNON: I would ask that that testimony
2 be submitted, the Exhibit 111 be admitted into evidence.

3 HEARING OFFICER RENAUD: Any objection to that
4 being admitted?

5 MS. HOLMES: No objection.

6 HEARING OFFICER RENAUD: All right, seeing none,
7 it's admitted.

8 MS. FOLEY GANNON: Thank you.

9 Ms. Apple, I understand that you have been working
10 on behalf of the project Applicant, related to the
11 evaluation of impacts on cultural resources; is that
12 correct?

13 MS. APPLE: Yes.

14 MS. FOLEY GANNON: Can you provide to us, briefly,
15 a description of the investigation that has been conducted
16 to date on site with regard to cultural resources, historic
17 resources?

18 MS. APPLE: Yes, I can. The investigations
19 started with archival research, including a check of the
20 previously recorded information at the State Clearinghouse
21 for Archeological Resources.

22 The Native American Heritage Commission was
23 contacted for a search of their sacred site files and for a
24 list of Native Americans with potential concerns for the
25 area.

1 A field work authorization was obtained from the
2 Bureau of Land Management and pedestrian field surveys were
3 conducted for all of the project area, including the linear
4 facilities. These incorporated the requisite Commission
5 buffer areas, both for the plant site, project site and for
6 the linears.

7 In addition, a built environment or architectural
8 study was conducted within the requisite half-mile
9 surrounding the plant site, as well.

10 This information was then documented in a
11 technical report, which was submitted to the Bureau of Land
12 Management and has been under review.

13 In that document sites were discussed and
14 preliminary evaluations were made, and 361 sites were
15 identified. These included prehistoric archeological sites,
16 historic period archeological sites, sites with both
17 components, and some indeterminate rock features.

18 For the built environment, there were 13 resources
19 identified, mostly local irrigation canal facilities.
20 However, two rail lines, the Plaster City plant, as well as
21 some previous gravel operations were identified.

22 MS. FOLEY GANNON: And as I understand it, the
23 next step in the evaluation process is to do an assessment
24 of the eligibility of the resources identified on the site
25 for inclusion in either the California Registry of Historic

1 Places or the National Registry. Is that accurate and has
2 that work been undertaken?

3 MS. APPLE: You are correct, that is the next step
4 after identification. For those resources that cannot be
5 assessed based solely on surface information we move into an
6 evaluation stage which often involves a second level of
7 field work, and that would be the testing phase.

8 In addition, there have been ongoing consultation
9 efforts. The original Native American groups that were
10 identified by the Native American Heritage Commission, were
11 contacted. BLM has been involved in ongoing meetings with
12 Native Americans, as well as myself, as a representative of
13 the Applicant. This includes a field visit and multiple
14 meetings for the programmatic agreement which CEC is a party
15 to for this project.

16 MS. FOLEY GANNON: In terms of making eligibility
17 determinations, I recognize that the determination's going
18 to have to be made by the BLM, but have there been
19 recommendations made to the BLM regarding the eligibility?

20 MS. APPLE: There are approximately a quarter of
21 the sites that have been identified, that will either be --
22 have been recommended eligible or it has been indicated that
23 additional data would need to be collected prior to making
24 that eligibility determination.

25 MS. FOLEY GANNON: So, a quarter of the sites,

1 that's approximately what --

2 MS. APPLE: Approximately 60.

3 MS. FOLEY GANNON: Sixty sites that either you're
4 recommending eligibility or you're going to -- you recommend
5 further analysis.

6 MS. APPLE: Analysis.

7 MS. FOLEY GANNON: And of that number how many, do
8 you know off the top of your head, how many are you
9 recommending eligibility based on the information that we
10 have today?

11 MS. APPLE: I believe there are 11.

12 MS. FOLEY GANNON: Eleven, okay. Now, you also
13 just referenced the programmatic agreement. If you can
14 describe, briefly, the programmatic agreement process that
15 is established under federal law and then how it is being
16 implemented with regards to this particular project?

17 MS. APPLE: The implementing regulations for
18 Section 106 of the National Historic Preservation Act allow
19 lead federal agencies to prepare a programmatic agreement to
20 guide treatment of cultural resources for large, complex
21 projects where not all of the impacts may be known or for
22 large interstate projects, this type of thing.

23 BLM has decided to follow this approach and is in
24 the process of developing a draft. In this process, the
25 primary parties are the lead federal agency and the State

1 Historic Preservation Officer.

2 The Advisory Council on Historic Preservation is
3 given an opportunity to participate and, in this case, they
4 have accepted that opportunity.

5 Other consulting parties include, in this
6 particular case, National Park Service, Army Corps of
7 Engineers, the National Trust for Historic Preservation and
8 several -- some individuals and some tribal groups.

9 The document, itself, is fairly succinct, it's a
10 process document. It describes what has been done so far
11 and then lays out a program for how to deal with cultural
12 resources as the project may impact them.

13 It addresses only those resources that have been
14 identified as significant.

15 This PA is being broadened to include the
16 California Register of Historical Resources, as well as the
17 National Register of Historic Resources, for their
18 definition of what is an eligible property.

19 MS. FOLEY GANNON: And I understand that the
20 Applicant has proposed a revision to the cultural biological
21 condition I, in the draft staff assessment. Can you
22 describe that change and the reason for that requested
23 change, please?

24 MS. APPLE: Well, the alteration to cultural
25 condition one was simply made to increase the specificity of

1 the staff's recommendation. Initially, to paraphrase, it
2 defers -- it didn't defer. It passed on the responsibility
3 to the programmatic agreement for compliance.

4 My recommendation is to include more of the
5 specific types of mitigations and requirements that we see
6 in the standard conditions coming from the Commission.
7 These would include such things as efforts to avoid sites,
8 monitoring, reporting standards, qualification standards,
9 training standards, things like this.

10 The Commission's document that -- the cultural
11 resource monitoring and mitigation plan, which is also
12 usually a requirement of the conditions for cultural
13 resource mitigation, is very equivalent to the historic
14 properties treatment plan, which is being prepared under the
15 programmatic agreement. So, both the State and the federal
16 agency have very similar approaches, it's just a matter of
17 getting the terminology into the staff's document.

18 MS. FOLEY GANNON: and have you worked on
19 programmatic agreements in the past?

20 MS. APPLE: Yes.

21 MS. FOLEY GANNON: And have you -- based upon your
22 experience, do you believe that a programmatic agreement is
23 an effective way of being able to provide mitigation and
24 appropriate treatment for eligible cultural resources?

25 MS. APPLE: Yes. The guiding document is the

1 Historic Properties Treatment Plan. And one of the things
2 that strengthens how that document is implemented is the
3 fact that it is a consulting process. It will not be one
4 agency implementing the requirements for the mitigation.
5 There will be agreement and there will be established
6 protocols.

7 Specifically, as now drafted the programmatic
8 agreement in appendix B.2 calls out special conditions
9 needed to also address requirements for CEQA mitigations?

10 MS. FOLEY GANNON: And do you have any date of
11 anticipation of when the programmatic agreement, the final
12 draft should be out and available for review?

13 Understanding that it's outside of your control,
14 but is there a schedule that you have seen, have there been
15 hints from the audience about when we could anticipate
16 seeing the final document?

17 MS. APPLE: Well, the draft has been circulated to
18 the consulting parties and I believe the review period for
19 that closes this week. It will be reissued and it is at
20 least a draft is to be attached to the FEIS, which I believe
21 is to go out on July 9th.

22 MS. FOLEY GANNON: And finally, in your opinion,
23 is the mitigation measures, as proposed by the Applicant,
24 sufficient for the Commission to make a determination about
25 the adequacy of the mitigation proposed?

1 MS. APPLE: Yes, they are.

2 MS. FOLEY GANNON: And if so, do you believe that
3 these mitigation measures are going to be, to the extent
4 feasible, reducing significant impacts?

5 MS. APPLE: They will reduce significant impacts
6 to many of the cultural resources.

7 There are, however, some categories of resources
8 and the de Anza Trail corridor being one of them, which is
9 may not be possible to reduce the impacts to less than
10 significant.

11 There may also be, we've had indications from
12 ongoing consultation that there are sites of concern to the
13 Native American community, which may have visual issues
14 which, here again, may be very difficult to mitigate to a
15 level less than significant.

16 Other than that, though, for most of the
17 archeological resources where data is the primary quality
18 that is making the resource eligible, standard approaches to
19 mitigation should reduce those impacts to less than
20 significant under CEQA.

21 MS. FOLEY GANNON: Thank you, Ms. Apple, I will
22 serves

23 Thank you Ms. Apple. I will submit her for cross-
24 examination.

25 HEARING OFFICER RENAUD: Thank you.

1 Staff?

2 MS. HOLMES: No questions.

3 HEARING OFFICER RENAUD: All right, CURE?

4 MS. MILES: I do just have a couple questions.

5 One is regarding a recent programmatic agreement meeting
6 with the BLM, where William Donaldson, the California State
7 Historic Preservation Officer was present. Were you present
8 at that meeting?

9 MS. APPLE: Yes, I was.

10 MS. MILES: Okay. And I wanted to just ask if you
11 heard Wayne Donaldson say, or ask the BLM whether they had
12 analyzed an alternative that did not put SunCatcher units
13 into the de Anza trail.

14 MS. APPLE: I don't specifically remember that
15 comment, but I do remember that Mr. Donaldson had concerns
16 about the trail. And the Applicant is initiating an
17 additional trail study using a variety of a aerial satellite
18 type imagery to better assess if there are any remnants.

19 To date, there have been no physical remnants of
20 the trail, or artifacts that would have been associated with
21 that time period, identified within the project area.

22 MS. FOLEY GANNON: Can I make a correction on
23 behalf of the Applicant?

24 There was a discussion of doing studies, there has
25 not been any commitment to doing the study of the trail.

1 MS. MILES: That's okay.

2 MS. FOLEY GANNON: Just for clarity purposes.

3 HEARING OFFICER RENAUD: Thank you. Thank you, we
4 appreciate that.

5 MS. APPLE: Yeah, that actually wasn't my
6 understanding. I thought that there was a firm commitment
7 made at that BLM meeting.

8 MS. FOLEY GANNON: Yeah, there was a firm
9 commitment to -- I was participating in that meeting, as
10 well, so I speak from real experience.

11 MS. APPLE: Correction, there was a --

12 MS. FOLEY GANNON: A commitment to look at it.

13 MS. APPLE: -- commitment to look at and I am
14 contacting -- right, and I am currently contacting parties
15 to find out the feasibility of doing that.

16 So, you are correct, no contracts have been
17 signed, yet.

18 MS. MILES: Based on the two known campsites that
19 are outside of the project site, in your professional
20 opinion would you be able to conclude that there's likely to
21 be a campsite on the project site?

22 MS. APPLE: Not necessarily, no.

23 MS. MILES: Okay. Has the technical report been
24 provided to the consulting parties?

25 MS. APPLE: I believe CURE has received it through

1 the CEC. Other than that, BLM has been reviewing it, the
2 CEC also has it. It is anticipated, BLM has indicated that
3 it will be released to the public in early to mid-June.

4 MS. MILES: Early to mid-June, okay. Do you
5 recall whether Wayne Donaldson asked about an alternative
6 regarding an equestrian trail through the project site, as
7 the parting of the Red Sea imagery that was discussed?

8 MS. APPLE: There was a discussion of the
9 potential for an equestrian trail to follow the de Anza
10 Trail.

11 MS. MILES: Through the project site. And the
12 parting of the Red Sea, I just want to get it on the record,
13 that was visual imagery of having the SunCatcher units on
14 either side of the trail and actually having a corridor
15 through the trail -- I mean, through the project site.

16 MS. APPLE: Well, I believe the parties that were
17 present indicated that no one was supporting that.

18 MS. MILES: Perhaps Wayne Donaldson was supportive
19 of that. Do you recall that he said that if there was a
20 trail that was the most important resource in California,
21 trail resource in California, it would be this one, the Anza
22 Trail?

23 MS. APPLE: He did say this was a -- if evidence
24 could be found of it, it would be a very important trail.

25 MS. MILES: That's not how I heard it. But,

1 nevertheless, I accept that, that that's your opinion. So,
2 I'm finished with my cross-examination.

3 HEARING OFFICER RENAUD: All right, thank you.

4 Cross-examination by any other party?

5 No. All right, thank you.

6 Mr. Budlong, is that a hand? Okay.

7 MR. BUDLONG: I have one clarification.

8 HEARING OFFICER RENAUD: Please use a microphone.

9 MR. BUDLONG: Is it on?

10 HEARING OFFICER RENAUD: Yes.

11 MR. BUDLONG: You mentioned 361 sites, a quarter
12 of which, like about 60, were candidates for the National
13 Register and 11 of those were for sure and the others
14 required some more analysis?

15 MS. APPLE: No, there have been 361 archeological
16 sites identified. A portion of these will have been
17 recommended and we are currently in discussions, it is BLM's
18 determination as to what is eligible and what is not.

19 Recommendations have been made, approximately 60
20 of the resources. There are also lithic scatters that would
21 be addressed as well. But there are approximately 60 sites
22 which are potentially or recommended eligible.

23 MR. BUDLONG: You separated out 11 of them and my
24 notes says you said 11 for sure, have I --

25 MS. APPLE: Not 11 for sure, 11 where the

1 recommendation has been made that they are eligible.

2 MR. BUDLONG: Okay. And later you were talking
3 about the PA talks about how to deal with significant sites.
4 And I'm wondering which of those 360 that have been
5 identified do you consider to be significant? Is that the
6 60 that are possible candidates or the 11 that you were
7 talking about?

8 MS. APPLE: Okay, the programmatic agreement will
9 address sites that have been found eligible for the
10 California Register of Historic Places, Historical Places,
11 or the National Register of Historic Places.

12 Those are eligible significant sites.

13 BLM, in consultation with CEC, will make those
14 decisions. They have not been made, yet.

15 To date, we have made recommendations to the
16 Bureau of Land Management and those are what those figures,
17 the 11, the 60, those simply are the recommendations that we
18 have made.

19 MR. BUDLONG: Okay, thank you.

20 HEARING OFFICER RENAUD: All right, thank you.
21 Any further questions?

22 MS. FOLEY GANNON: Just one redirect question.

23 With regard to the de Anza Trail, to date has
24 there been any evidence found of an actual trail that's been
25 identified as the de Anza Trail on the site?

1 MS. APPLE: No, there has not.

2 MS. FOLEY GANNON: Thank you.

3 COMMISSIONER BYRON: Thank you, Ms. Apple, thank
4 you for hanging in here with us this afternoon. And Ms.
5 Dunmire, to you as well.

6 A couple of quick questions, I think. One's
7 process oriented and one is likelihood. But as an expert in
8 this area, could you please explain, briefly, how you
9 understand we will indeed come to an agreement on this
10 programmatic agreement?

11 MS. APPLE: Well, in essence, both the state
12 mandate and the federal mandate are to address impacts to
13 significant sites and the first for both the federal and the
14 state process, avoidance is the preferred treatment.

15 If that is not feasible and we are currently
16 working with the engineers to try to avoid resources -- if
17 that is not feasible, however, both the state and the
18 federal process says you move into a program that addresses
19 the qualities that make the resource eligible. If it's
20 data, content for an archeological site, if it's
21 architectural content, design for a building, if it is
22 artistic elements you address the qualities that make the
23 resource eligible and you mitigate for, in essence, the
24 damage you are doing to those qualities.

25 So, both programs have the same set of goals.

1 There are some differences in terminology, there
2 are some differences in timing according to the different
3 protocols. I mean, one of the minor issues is the
4 Commission's staff requests individual resumes of people
5 participating in the cultural resource investigations to
6 make sure that they're qualified.

7 The BLM does this through a permitting process.
8 Both agencies are looking at the qualifications of the
9 people conducting the work.

10 So, our real challenge is simply to work through
11 some of the verbiage, some of the protocols. I mean, one of
12 the protocols that the BLM actually uses is a state protocol
13 for addressing sparse lithic scatters. And federal agencies
14 in California use this all the time, and it's out of the
15 Office of Historic Preservation, the California Office of
16 Historic Preservation that has designed this.

17 So, there is a track record of these kind of
18 crossover and cooperative efforts.

19 The two documents that guide the treatment of the
20 resources, Energy Commission staff calls theirs the Cultural
21 Resource Monitoring and Mitigation Plan. Federal agencies
22 call theirs the Historic Properties Treatment Plan.

23 Both documents are umbrella documents that provide
24 context, discovery plans, monitoring plans, reporting
25 requirements, so there are a lot more similarities than one

1 might initially feel there are.

2 So I, personally, especially, with how closely
3 staff has been working, Commission staff and the BLM have
4 been working together, I would see that this is completely
5 feasible.

6 COMMISSIONER BYRON: All right, so it's feasible,
7 but my question is, from a process point of view can someone
8 stop or block this programmatic agreement from becoming a
9 final document?

10 MS. APPLE: The only parties that would be able to
11 do that would be the federal agency, in this case the Bureau
12 of Land Management, and the State Historic Preservation
13 Officer. Those are the two parties that must be involved in
14 signing the document.

15 COMMISSIONER BYRON: So, they're doing the
16 balancing act here, they're the ones that will determine
17 whether or not we indeed get a programmatic agreement?

18 MS. APPLE: Yes.

19 COMMISSIONER BYRON: And in your professional
20 opinion, what's the likelihood for this project that we will
21 get a programmatic agreement in a timely manner?

22 MS. APPLE: Well, I don't have my crystal ball
23 with me, but I would give you 98 percent.

24 COMMISSIONER BYRON: Thank you.

25 HEARING OFFICER RENAUD: All right, any further

1 questions of Rebecca Apple?

2 Thank you.

3 MS. APPLE: Thank you.

4 HEARING OFFICER RENAUD: You may step down.

5 Mr. Thompson, I understand you had something very

6 brief?

7 MR. THOMPSON: We have two questions on redirect

8 for Mr. VanApple [sic].

9 HEARING OFFICER RENAUD: All right. Mr. VanApple?

10 MR. THOMPSON: What time is it?

11 HEARING OFFICER RENAUD: Late. Mr. VanPatten,

12 you're still under oath.

13 MR. VAN PATTEN: All right, I'll try to be really

14 fast.

15 MR. THOMPSON: Mr. VanPatten, the first point

16 is --

17 MR. VAN PATTEN: It's not on, I don't hear you.

18 MR. THOMPSON: Is it on, now? No?

19 HEARING OFFICER RENAUD: You have to speak

20 directly into it.

21 MR. THOMPSON: I was off at an angle. Does it

22 work now? Does it work now?

23 MR. VAN PATTEN: Yes.

24 MR. THOMPSON: All right. Number one, you were

25 here this afternoon during a fairly extended discussion of

1 the Dan Boyer well, and I believe that you have access and
2 have read what is now called Exhibit 118, which is the -- a
3 letter with "Planning and Development Services" written
4 boldly across the top. Are you familiar with that?

5 MR. VAN PATTEN: I am familiar, I have it in front
6 of me.

7 MR. THOMPSON: And there were references at
8 various times to the requirements that are listed in there
9 and there has been testimony that not all of them have been
10 complete. Would you please discuss those requirements and
11 the state of completion of those requirements?

12 MR. VAN PATTEN: I'll do that. The Dan Boyer
13 well, the specific terms of groundwater or groundwater well
14 registration, there are a couple of terms in here that are
15 required to be completed before the well can be used, and
16 I'll start with T-3, "install a flow meter sealed by a
17 California State licensed water well drilling contractor."

18 That's been done as of last week, as we testified
19 earlier.

20 And then "the registered user shall submit an
21 annual report to the Planning and Building Department
22 indicating the yearly amount of water extracted."

23 That will happen in 51 weeks.

24 MR. BUDLONG: Is that still T-3?

25 MR. VAN PATTEN: I'm on T-3, it's the second

1 sentence in T-3. So, that will happen and we're ensuring
2 and we're doing what we can to ensure that the Dan Boyer
3 Water Company does what they should be doing to meter the
4 water and register and document all the metering for the
5 next year, and annually report it as required by the
6 groundwater well registration conditions.

7 Under T-4, the facility requires "a large vehicle
8 deliveries designated loading and unloading provisions shall
9 be made" -- forgive me, I don't have my glasses on -- "and
10 reviewed and approved by the Planning and Building
11 Department, there needs to be an encroachment permit" and so
12 forth.

13 An encroachment permit has been issued, the work
14 has begun and it will be done this week, on T-4.

15 T-7, "Party utilizing the water well for domestic
16 purposes," there will have to be some work done. We're not
17 involved with any drinking water or domestic purpose use.
18 So, if he does end up needing it between now and then, we're
19 going to help to assure that he does go ahead and do the
20 testing of the water to make sure it's adequate.

21 Oh, it's T-8 that required the encroachment
22 permit, which we have on hand.

23 And then T-9, "prior to approval of the
24 groundwater well registration any land use violations will
25 be cleaned up or abated." And we're working diligently, as

1 was testified to earlier today, and they're nearly complete.
2 As soon as that's done here, in the next week or so, we're
3 going to bring the planning department over -- the planning
4 and building department and make sure they that they sign
5 off on this and make it ready for us.

6 MR. THOMPSON: So, in summary on this -- in
7 summary on this subject matter, is it fair to say that this
8 is a well that was out of compliance with applicable
9 regulations until you came along and through your efforts,
10 along with Dan Boyer, are making this well into compliance
11 with all regulations?

12 MR. VAN PATTEN: You could say that, yes.

13 MR. THOMPSON: Thank you. The second and last
14 topic, I would ask you to consider this, throughout this
15 proceeding at various times the Applicant has stressed the
16 importance of schedule. And I want to make it clear to the
17 Committee why this schedule is so important, what are the
18 drivers behind the schedule that creates our schedule angst?

19 So, if you could start, if you could just very
20 briefly discuss kind of the milestones or the major points
21 in the schedule that make us worry?

22 MR. VAN PATTEN: Well, I think we've already
23 talked about the ARRA, American Recovery Reinvestment Act,
24 end of the year requirement, or the renewable energy grant
25 lieu of ITC deadline.

1 But the other very important deadline for us is
2 our power purchase agreement with SDG&E that requires us to
3 have nine megawatts online by July, or no later than July
4 31st of 2011.

5 We're required to have our transmission
6 interconnect by June 30, 2011. In order for us to do that,
7 if there's any delay in a decision by the Commission to
8 begin construction and it pushes us into a later part of the
9 year, and that later decision is then impacting our ability
10 to get on site because of a potential condition on, as an
11 example, the Flat-tailed horned lizard relocation, and we
12 were to be able to start construction, as an example, in
13 April, or whenever the restart of the Flat-tailed, you know,
14 prime season is for survey and relocation, we would
15 absolutely not be able to make those contractual conditions
16 with SDG&E.

17 MR. THOMPSON: Thank you very much.

18 COMMISSIONER BYRON: Yes, since you brought it up,
19 how much money are we talking about, the ARRA funds?

20 MR. VAN PATTEN: ARRA funds, typically in the
21 financial structure, would be the equivalent of what the ITC
22 would have been. In project structures like this, it
23 typically becomes approximately 30 percent of the financial
24 structure, breaking down at approximately 20 percent equity,
25 minimum, 30 percent, roughly, renewable energy grant in lieu

1 of ITC, the remainder being bank funds or federal financing
2 bank funds 50 percent.

3 COMMISSIONER BYRON: So, how much money is that?

4 MR. VAN PATTEN: Are we getting into commercially
5 sensitive information that I am allowed to talk about or do
6 I have the right to --

7 MS. FOLEY GANNON: Sean Gallagher can come up and
8 offer testimony, and he was previously sworn.

9 MR. THOMPSON: See if you can give a general or
10 ball park?

11 Mr. Commissioner, you don't want a precise number
12 or --

13 MR. VAN PATTEN: We have stated publicly that our
14 projects are less than 3,000 a kilowatt, if we just use that
15 as an example, and it's 750, it's slightly over \$2 billion.
16 For simplicity, if it's a \$2 billion project, it would be
17 \$600 million of ITC money.

18 COMMISSIONER BYRON: And that's additional ARRA
19 funding or American Recovery and Reinvestment Acts that
20 would be coming into the State as a result of getting this
21 project construction started before the end of the year?

22 MR. VAN PATTEN: That's correct.

23 COMMISSIONER BYRON: Thank you.

24 COMMISSIONER EGGERT: And just to follow up on
25 that, the conditions of the ITC, I know, have been in some

1 flux, but it requires some level of sort of steel in the
2 ground or capital expenditure by a certain date, could you
3 maybe just expound on that for a second?

4 MR. VAN PATTEN: We're required to have certain
5 eligible construction activities, which could include
6 significant contracting, before the end of this year.

7 Safe harbor is five percent expenditure on the
8 overall project budget.

9 COMMISSIONER EGGERT: And then you had said that
10 for your PPA it requires, I believe, nine megawatts by July?

11 MR. VAN PATTEN: By July 31st.

12 COMMISSIONER EGGERT: What would be an approximate
13 estimate of the time from initiating construction to having
14 that come online, do you have a --

15 MR. VAN PATTEN: If we were to start construction
16 of the project, right now our schedule shows October 1, for
17 lack of a better date we can use that as our baseline, we
18 could, at best, have nine megawatts online sometime in April
19 or May of 2011, before the July 31st deadline in the PPA, in
20 the power purchase agreement.

21 Therefore, my contention or my statement was
22 directing more at any delay that would cause us a further,
23 subsequent delay that could not allow me, then, to start
24 until April or May, in which case that time frame would not
25 make it possible for me to achieve the PPA timelines of

1 having my transmission interconnect done by June 30 and my
2 nine megawatts online by July 31.

3 COMMISSIONER EGGERT: And that's of significance
4 because of what potential conditions of certification might
5 be included, is that --

6 MR. VAN PATTEN: That's correct.

7 COMMISSIONER EGGERT: Okay.

8 MR. VAN PATTEN: That's correct.

9 COMMISSIONER EGGERT: Okay, that's all the
10 questions.

11 HEARING OFFICER RENAUD: Thank you. Is there any
12 cross-examination?

13 Let me start, go in order. Staff?

14 MS. HOLMES: No.

15 HEARING OFFICER RENAUD: CURE?

16 MS. MILES: No.

17 HEARING OFFICER RENAUD: Budlong?

18 MR. BUDLONG: What happens if you don't get the
19 ARRA funds, is this a make or break for you? To rephrase
20 that is, is the economics of the project based on getting
21 ARRA funds?

22 MR. VAN PATTEN: That is something that we are
23 highly dependent on, but I can't tell you here, today, that
24 it would make or break the project.

25 In the financial markets as you're, I'm sure,

1 aware, they move daily and bank financings, interest rates
2 change daily. The attitude of investors in the market
3 changes daily.

4 And if at a time if ARRA funds were not available,
5 for instance if the decision by the Commission were January
6 1st, 2011 and it makes it impossible for me to access the
7 ARRA funds, we would have to make a decision then based on
8 the then current bank market and equity market.

9 So, I cannot answer that question accurately for
10 you.

11 MR. BUDLONG: We didn't talk about DOE loan
12 guarantees, but you've applied for a DOE loan guarantee, I
13 presume?

14 MR. BUDLONG: And is it appropriate to ask whether
15 you're dependant upon that as to whether this project
16 is --

17 MR. VAN PATTEN: The same answer would apply.
18 It's a really, it's a specific time dependant answer. We
19 would love to have a DOE loan guarantee because it would
20 allow us additional certainty that the economics would work
21 out for the project.

22 MR. BUDLONG: I think, my additional certainty do
23 you mean a reduction of risk?

24 MR. VAN PATTEN: Yes, it would be a reduction of
25 risk, of financial risk.

1 MR. BUDLONG: In your contingency planning have
2 you been to the private market to gauge their interest in
3 your project if, indeed, you do not get this funding?

4 MR. VAN PATTEN: We've looked at all available
5 financing sources and equity sources for this project.

6 MR. BUDLONG: I would ask you what the result
7 would be, but I don't think you're going to tell me, whether
8 you get much interest or not in funding it privately?

9 MR. VAN PATTEN: I'm sorry, I didn't get an
10 understanding of the correct question.

11 MR. BUDLONG: You say you've looked at all
12 contingencies and have you -- which includes private
13 financing. Have you gotten much interest in that?

14 MR. VAN PATTEN: We have interest from various
15 parties, various forms of funding, but in my experience as a
16 project developer, starting in 1993, any financing I've ever
17 done has to include multiple avenues for equity and debt and
18 you only really know when you're close to closing, and so
19 you're always looking at alternatives. Nothing in this
20 world is certain.

21 MR. BUDLONG: Okay, thank you, that's my question.
22 done.

23 HEARING OFFICER RENAUD: Okay, Mr. Beltran.

24 MR. BELTRAN: I've got a couple questions.

25 You say that one of the big motivators here is

1 this contract that you've got to provide power. What's so
2 special about those dates, other than the fact that they've
3 been contracted? Why did the Applicant choose those dates?

4 MR. VAN PATTEN: In a contract, as with any
5 contract, you try to build in a schedule of deliverables
6 that's achievable and that, typically, will have a small
7 margin in them for achievement. Because the counter party,
8 as with you, don't want to have to hit that date and have
9 consequences because it's detrimental, really, to both
10 parties.

11 My counter party, SDG&E wants their power by the
12 date they want it. I don't want to go past that date
13 because it has negative financial consequences on me. So,
14 those dates are all set out to properly motivate both
15 parties to come to a conclusion on the project.

16 MR. BELTRAN: Well, if I could kind of paraphrase
17 what you said, is that there's business risk to you if you
18 don't meet those dates and that the elements of that risk
19 are the contingent approval of this project.

20 The things that are holding that up are the EIR,
21 you know, all of the permits that have to be done, and you
22 have a whole staff of consultants who, I think, could have
23 advised you on the risks that were involved.

24 You know, it just seems that -- it seems that you
25 picked a date and you're working back and trying to make

1 everything fit.

2 MR. VAN PATTEN: Is there a question?

3 HEARING OFFICER RENAUD: Mr. Beltran, let me ask
4 you to stick to questions and no speeches.

5 MR. BELTRAN: Okay.

6 HEARING OFFICER RENAUD: Based on what the witness
7 testified.

8 MR. BELTRAN: I understand your point.

9 Did your advisors -- do you feel that the advisors
10 accurately portrayed the risks that you would be faced to
11 get approval for this?

12 MR. VAN PATTEN: I think we were very well advised
13 that risks that we're undergoing right now, and will undergo
14 going forward, although unique to a solar project and solar
15 projects are new, are not dissimilar to the risks that you
16 undergo on any project. And I'm a power project developer,
17 these are very normal risks we undergo on every project that
18 we sign a power purchase agreement and then have to meet
19 certain dates in order to mitigate our financial risks on
20 the project.

21 MR. BELTRAN: Of the \$2 billion, and I understand
22 that that's just an estimate, that there are going to be
23 \$600 million of public funds to subsidize that, of the 600 I
24 understand, you know, some of the stamped parts for the
25 structure are going to be contracted with an automotive

1 company, which I assume is outside of California. Of the
2 600 or of the \$2 billion, how much of that is actually going
3 to be spent here, in California?

4 MR. VAN PATTEN: I don't have a figure to give you
5 today.

6 MR. BELTRAN: Okay, that's all.

7 MR. VAN PATTEN: I don't know.

8 MR. BELTRAN: Thank you.

9 HEARING OFFICER RENAUD: All right, thank you.

10 Redirect?

11 MR. THOMPSON: Just one question, Mr. VanPatten,
12 could SDG&E have wanted dates in June and July because their
13 summer peak for energy consumption and peak demand occurs
14 shortly after that?

15 MR. VAN PATTEN: That's not why they wanted those
16 specific dates. They wanted -- they did not want those
17 dates for that reason, they wanted those -- they really
18 would like to have the power at the end of this year. They
19 acquiesced to the schedule we have and were gracious enough
20 to allow for me to achieve those dates is the answer.

21 MR. THOMPSON: Thank you. I'd better not ask
22 anymore.

23 HEARING OFFICER RENAUD: All right, anything else.

24 Thank you, Mr. VanPatten.

25 MR. VAN PATTEN: Uh-hum.

1 HEARING OFFICER RENAUD: All right. Well, I
2 believe the last witness I've been advised about is from
3 staff and it would be from Mr. Meyer.

4 MS. HOLMES: I guess I have a bit of question
5 about that.

6 HEARING OFFICER RENAUD: Yes.

7 MS. HOLMES: Nobody had any specific questions, as
8 I understand it, of Mr. Meyer, which would put his
9 testimony, I think it's executive summary and project
10 description, in the same category of the other pieces of
11 testimony that you had requested come in via declaration
12 today.

13 HEARING OFFICER RENAUD: All right.

14 MS. HOLMES: So, perhaps we don't need --

15 HEARING OFFICER RENAUD: It's your prerogative to
16 move it into evidence by declaration and then that can still
17 be tendered for cross. So, is that what you'd like to do?

18 MS. HOLMES: Yeah, I'd like to move in all
19 portions of Exhibit 300, with the exception of cultural
20 resources alternatives, biological resources, and soil and
21 water resources.

22 HEARING OFFICER RENAUD: Is there any objection to
23 that?

24 MR. THOMPSON: None.

25 HEARING OFFICER RENAUD: That's the AFC. I'm

1 sorry, the SA.

2 MS. HOLMES: That is the staff assessment, with
3 the understanding, as I've said here before, the staff is
4 reviewing and some of those sections may be revised.

5 HEARING OFFICER RENAUD: More to come, all right.
6 Thank you.

7 MS. MILES: Just for clarification, does that
8 include Appendix 1, the Seeley Wastewater Treatment
9 Facility?

10 MS. HOLMES: No, it would not.

11 MS. MILES: Would not.

12 HEARING OFFICER RENAUD: All right, with that
13 caveat, is there any objection to the admission?

14 MR. THOMPSON: No.

15 HEARING OFFICER RENAUD: All right, thank you.

16 Did anyone want to cross-examine Mr. Meyer with
17 respect to his submitted written testimony?

18 MR. THOMPSON: Nooo.

19 (Laughter.)

20 MS. MILES: I had a speech ready.

21 MS. HOLMES: That's why they're not asking you
22 anything.

23 HEARING OFFICER RENAUD: All right, good. Well,
24 if no one has any further witnesses to present, I think we
25 do have a housekeeping matter and that is I think -- I would

1 like to ask the parties to consider whether they have moved
2 into evidence the exhibits that they have referred to or
3 used in this proceeding these two days. And if there are
4 any they have overlooked to make those motions, now, or
5 consider possibly submitting those at a later date, in
6 writing, with the opportunity for other parties to respond.

7 MR. THOMPSON: I would like to move any of the
8 exhibits numbered 1 through 118 that I've forgotten to move
9 previously into the record.

10 HEARING OFFICER RENAUD: Well, to the extent those
11 were used or referred to by witnesses, does anybody object
12 to that?

13 MS. HOLMES: No objection.

14 HEARING OFFICER RENAUD: Good, those will be
15 admitted.

16 MS. FOLEY GANNON: As well as the testimony that
17 was supported by declaration and we did not bring here
18 because there was no cross or direct?

19 HEARING OFFICER RENAUD: Yes, that's admitted,
20 too.

21 All right, any other party wish to make a similar
22 motion?

23 MR. SILVER: I'm not sure, I'm sorry, there's been
24 some confusion as to what the motion is. Now, we have the
25 exhibits of Mrs. Harmon relating to hydrology. She has not

1 testified on that issue and we reserved that testimony.

2 HEARING OFFICER RENAUD: And it sounds like you're
3 going to call her to testify about that at a future session.

4 MR. SILVER: That's correct and so there's no --

5 HEARING OFFICER RENAUD: So, those needn't be put
6 into evidence at this time.

7 MR. SILVER: Okay.

8 HEARING OFFICER RENAUD: All right, then you can
9 move them into evidence later. But we generally require a
10 witness to refer to an exhibit before it can be moved in.

11 MR. SILVER: Okay.

12 HEARING OFFICER RENAUD: All right, anyone else?

13 MS. MILES: I have some exhibits that were
14 accompanied by a declaration, from Janet Lorraine, who's
15 actually our paralegal, and I'd like to go ahead and move
16 those into evidence. I'm not sure, do I have to know
17 exactly the numbers? They were listed as Janet Lorraine in
18 the exhibit and witness list.

19 HEARING OFFICER RENAUD: All right. Janet
20 Lorraine is a paralegal. Was she -- did she submit a
21 declaration?

22 MS. MILES: She did.

23 HEARING OFFICER RENAUD: I see, all right. Well,
24 you did assign exhibit numbers to all of your stuff, did you
25 include that one?

1 MS. MILES: I did. Yes, I did include her
2 declaration, it was attached to the exhibit, one of the
3 exhibits. Let's see. Okay, I have the numbers from the
4 opening testimony.

5 HEARING OFFICER RENAUD: Good, please.

6 MS. MILES: Exhibit 493, Exhibit 494, Exhibit 495,
7 Exhibit 496.

8 HEARING OFFICER RENAUD: All right.

9 MS. MILES: I'm sorry, and Exhibit 497. And
10 that's just from opening. There might have been one from
11 rebuttal, I can look right now.

12 HEARING OFFICER RENAUD: All right, does anybody
13 have an objection to those being admitted into evidence?

14 MR. THOMPSON: None.

15 HEARING OFFICER RENAUD: All right, they will be
16 admitted.

17 And you're looking for one more?

18 MS. MILES: Yeah, okay. Okay, Exhibit 499-E.

19 HEARING OFFICER RENAUD: 499-E, that's your last
20 exhibit submitted.

21 Anybody object to that being moved into evidence?

22 MR. THOMPSON: No.

23 HEARING OFFICER RENAUD: All right. All right,
24 admitted into evidence.

25 MS. MILES: Thank you.

1 HEARING OFFICER RENAUD: It will be admitted.

2 MS. MILES: Thank you.

3 HEARING OFFICER RENAUD: All right, thank you. I
4 think it's a good time to call it quits for this session.

5 MR. THOMPSON: Oh, you gave us a list of numbers,
6 sections, you had us write down the numbers, 2, 4, 5, 6, 7.

7 HEARING OFFICER RENAUD: Yeah.

8 MR. THOMPSON: Were you going to revisit those?

9 HEARING OFFICER RENAUD: Oh, okay, let's see. All
10 right, thank you for that prompt, Mr. Thompson.

11 Yesterday, at the end of the day I listed the
12 topics from the topic and witness list as to which we only
13 had testimony from Applicant and staff, and no indication of
14 cross-examination from anyone. And I would like to propose
15 that we declare the record closed on those topics.

16 Does anybody object to that?

17 MS. HOLMES: Staff objects because a number of
18 those topics will be -- have been affected by the revisions
19 and we will be filing supplemental testimony to address the
20 revisions.

21 For example, transmission system engineering,
22 we're going to have to be looking at the reroute of the
23 transmission line. Worker safety and fire protection,
24 hazardous materials management as a result of a change in
25 the hydrogen storage.

1 Traffic and transportation, and air quality as a
2 result of increased truck transportation, I'm not expecting
3 that these changes will necessarily be significant, but I
4 think it would not be very productive to close the record
5 since we're going to have to get additional information into
6 the record to address those changes.

7 HEARING OFFICER RENAUD: I think you've made a
8 good point. And I think rather than go through the exercise
9 of closing the record and then you're moving to reopen it
10 and me granting it, that motion we'll just leave it.

11 MS. HOLMES: Thank you.

12 HEARING OFFICER RENAUD: So, I think you made a
13 good point and no more need be said.

14 HEARING OFFICER RENAUD: Would either of the
15 Commissioners care to make any closing comments?

16 MS. FOLEY GANNON: Before closing remarks, we have
17 one other procedural question.

18 HEARING OFFICER RENAUD: Okay.

19 MS. FOLEY GANNON: We had talked at the beginning
20 of the proceedings this morning about the possibility of
21 briefing three specific issues and we would like to see if
22 you've had further time to think about that and see if we
23 can establish a schedule.

24 HEARING OFFICER RENAUD: Yes. The Committee would
25 be interested in briefs on the topics that Mr. Therkelsen

1 mentioned this morning, but we aren't going to order it. We
2 would suggest that you submit those briefs, or any other
3 briefs that you'd like to, Applicant, and that once those
4 have been submitted parties review them and determine
5 whether or not they wish to also submit briefs on those
6 topics.

7 MS. FOLEY GANNON: I think, then, the only
8 question we would have, I guess, and maybe we'd do this with
9 a motion, with our submitting a brief, if we could request
10 an expedited briefing schedule.

11 HEARING OFFICER RENAUD: Transcript -- oh,
12 briefing schedule.

13 MS. FOLEY GANNON: If we are submitting -- you
14 know, if we submit it, just so that we can, hopefully, get a
15 response and get some resolution to these issues, that would
16 be helpful.

17 HEARING OFFICER RENAUD: Yeah. Once you submit
18 them, we see how long they are, I'll get a sense as to what
19 would be a reasonable response time and make sure that
20 everybody has a reasonable and fair opportunity to respond.

21 MR. SILVER: Well, I'm confused a bit by this
22 because wasn't it Mr. Therkelsen who set out a bunch of
23 issues but for one thing, with regard to water, he
24 mischaracterized what it is, he referred, specifically, to a
25 conditional use permit.

1 I would like to ask that the Hearing Officer, and
2 we have some time to devote to it, now, try to specify the
3 issues that you would like the parties to brief, rather than
4 have this totally open-ended based on mischaracterizations
5 by Mr. Therkelsen as to what's in the record.

6 HEARING OFFICER RENAUD: I'm telling you, first of
7 all, I know the Applicant wants to submit some briefs on
8 some topics and I'm going to leave that up to their
9 discretion.

10 Any other party that would like to submit briefs
11 on any topic, we will not refuse those, but we will provide
12 everybody an opportunity to respond to them.

13 I know this is a little bit unorthodox, Ms. Holes,
14 but I'm not going to do the usual, you know, strict briefing
15 requirements.

16 MS. HOLMES: Is what the applicant's submitting,
17 and perhaps I should be asking this, more like a motion,
18 with the supporting Ps and As?

19 MS. FOLEY GANNON: What we have submitted, that
20 we -- what we have proposed that we would like to brief is
21 three specific issues.

22 One is related to how Seeley needs to be treated,
23 one is related to the Dan Boyer well, how that needs to be
24 treated, and one is the impact of the identification of the
25 least environmentally damaging practicable alternative on

1 the staff assessment and the ability for the Commission to
2 move forward. So, those are three discrete issues.

3 We intend to submit briefs on those by Friday.
4 And we would like to, and we understand that you are not
5 requiring a schedule for us, but we would propose or submit
6 we would like to be able to establish a schedule that says
7 if we submit these briefs by Friday, can we get an idea of a
8 date by which we could have the other parties' response to
9 those briefs?

10 HEARING OFFICER RENAUD: And I think we've
11 responded to that by saying let us see them, we'll base it
12 primarily on their length and complexity and we'll give the
13 parties an ample and fair opportunity to respond, bearing in
14 mind your wish for speed.

15 MS. HOLMES: May I ask a question? I guess what
16 I'm trying to understand is given that staff has committed
17 to preparing a staff assessment on June 27th, why we would
18 brief the application of legal principles when we don't have
19 all the facts into evidence at this point upon which -- to
20 which those principles would apply?

21 And the prime example is the one of the Dan Boyer
22 well, I'm not going to cast aspersions on anyone's
23 characterization of information, but it does seem that there
24 is some information that's missing, that the county has
25 offered to help us obtain, and it seems to me that what

1 legal principles will apply ultimately in this case depends
2 upon what the facts are. It's very difficult to know what
3 principles in the absence of facts.

4 HEARING OFFICER RENAUD: Yes, all right.

5 MS. HOLMES: And I would suggest that legal
6 briefs, on legal issues, should wait until the record is
7 closed?

8 HEARING OFFICER RENAUD: Well, I know that's the
9 way it's usually done. I think this is a little bit of an
10 unusual circumstance. And I -- I, and the Committee, are
11 viewing these briefs that the Applicant's going to submit as
12 informational. We are not planning to make a ruling on
13 anything said in the briefs until the record is closed and
14 at that time we may ask for further briefing on those or
15 other topics.

16 MS. HOLMES: So, staff could file briefs on the
17 legal issues that are raised by the Applicant's filings
18 post-hearing; right?

19 HEARING OFFICER RENAUD: Yes.

20 MS. HOLMES: Thank you.

21 HEARING OFFICER RENAUD: Yes, you could. But I
22 think for purposes of assisting the Committee in
23 understanding these issues in these proceedings, we're
24 looking forward to reading the Applicant's arguments.

25 MS. FOLEY GANNON: And we were hoping to be able

1 to get some guidance and some response to this, and maybe we
2 should be doing it as a motion, with points and authority.
3 If that is preferable, we can certainly do it that way and
4 frame it that way.

5 HEARING OFFICER RENAUD: You can always --

6 MS. FOLEY GANNON: Typically, I mean, it's an
7 issue, like the list that you gave yesterday, which I have
8 to say was very helpful, at least for us understanding how
9 you were approaching those issues.

10 But, frankly, you know, a number of those dates
11 that you identified really appeared to be us to be things
12 that were going to kill our schedule, it was going to make
13 it impossible for us to be able to meet a schedule that the
14 project could work under.

15 So, that raised issues. And we think that there
16 are legal reasons why those things should not kill the
17 schedule and we are hoping to be able to set forth, again, a
18 pathway --

19 HEARING OFFICER RENAUD: Right.

20 MS. FOLEY GANNON: -- for and specifically for
21 some things that we think there are legal arguments, right.

22 HEARING OFFICER RENAUD: Let me respond. You
23 don't need to ask the Committee if you can file a motion.
24 So, if you want to file a motion, you ought to just do that
25 and the Committee will then determine what's the best way to

1 proceed based on that. We can't stop people from filing
2 motions.

3 MS. HOLMES: No, I can't. I was going to ask for
4 clarification about the dates. You mentioned dates that
5 staff has identified and the only two dates that I believe
6 that we've identified are the June 27th date for the
7 supplemental staff assessment and the end of July for the
8 cultural, which is not the subject of any of the topics that
9 you've requested briefing on.

10 MS. FOLEY GANNON: I guess the concern was in the
11 description of what was going to be in the June 27 staff
12 assessment, you indicated that there were a number of areas
13 where you anticipated that the staff was not going to be a
14 thorough review.

15 The LEDPA is an example of it. You said that you
16 could not determine about how the staff assessment would
17 have to deal with alternatives and with impacts to aquatic
18 resources and you were questioning whether you were going
19 to be --

20 HEARING OFFICER RENAUD: Right.

21 MS. FOLEY GANNON: And that's the way I
22 interpreted, maybe I got it wrong. And I did, then it would
23 be helpful.

24 HEARING OFFICER RENAUD: Okay, I want to put a
25 stop to all that.

1 As I say, you can file any motions, the Applicant
2 can file, any party can file any motions they want to. And
3 I'm not suggesting you do this, but I have seen in other
4 cases, motions which ask the Committee to order a party to
5 hurry up, to put it bluntly. If you want to try that, try
6 it. But I'm not going to tell you how to run your practice.

7 MS. FOLEY GANNON: Appreciate it.

8 HEARING OFFICER RENAUD: But I think you're
9 suggestion of making these motions sounds like it might make
10 it clearly exactly what you're asking for and when, and then
11 the Committee can make a decision about whether it's an
12 appropriate time to do that.

13 MS. FOLEY GANNON: Okay.

14 HEARING OFFICER RENAUD: Okay.

15 MR. THOMPSON: Thank you.

16 HEARING OFFICER RENAUD: Thanks. Thank you, good,
17 good discussion.

18 All right, if there's no more housekeeping, I
19 think we ought to wind things up.

20 MR. SILVER: There was one item of housekeeping.
21 A promise was made, I thought, to Mr. Budlong, yesterday,
22 that there would be delivery by the Applicant of the
23 schematic, which shows the hydrogen piping plans and he has
24 not received that.

25 HEARING OFFICER RENAUD: All right, I see people

1 looking. Are you looking for it?

2 MR. THOMPSON: Yes.

3 MS. FOLEY GANNON: Yes, we actually had it here
4 yesterday and we forgot to give it.

5 HEARING OFFICER RENAUD: Okay, it's here, you'll
6 get it.

7 Thank you. Are there any other housekeeping
8 matters?

9 Good. Hearing none, I'll ask the Committee if you
10 want to say anything?

11 COMMISSIONER BYRON: I'll be brief, I just wanted
12 to compliment all the parties and the public on their
13 conduct in these two days of evidentiary hearings. It's
14 very difficult to do this and I really appreciate everyone's
15 effort to keep this on point and allow us to focus on the
16 issues at hand.

17 And if I could just briefly reiterate, the purpose
18 that we're trying to accomplish, the purpose that we will
19 accomplish here is to establish an evidentiary record so
20 that we are able to make a recommendation and my Commission
21 is able to make a decision. You've given us a lot of rich
22 evidence these last two days to help us to do that, but we
23 don't have it all.

24 We're going to continue to press on schedule
25 because there are benefits to the State of California, that

1 have been reiterated a couple of times during this hearing,
2 I won't repeat them.

3 Our process, as you can tell, is sometimes
4 contentious, and that's okay. It's done that way by design
5 because that's what allows us to get issues on the table, it
6 also allows us to get them resolved to the extent we could,
7 and these last two days we have done so.

8 And there are some very difficult issues to settle
9 in this particular case, I think, as there are in all cases
10 before my Commission.

11 We welcome and encourage public participation. I
12 think you've all got a sense of the complexity of the issues
13 that we're dealing with. Our job is to balance those issues
14 and the social benefits and come to a decision.

15 I like some of the suggestions that were made
16 earlier today and the recent discussion that we just had
17 with regard to the briefing, and providing this Committee
18 additional information.

19 We will certainly consider holding a status
20 conference in the near future. I like the notion of
21 particularly involving the STEP and I'm drawing a blank on
22 that particular acronym right now.

23 (Laughter.)

24 COMMISSIONER BYRON: I'm sorry, the REAT, the
25 Renewable Energy Action Team, R-E-A-T. And we look forward

1 to the hard work of our staff to complete their assessment
2 by June 27th. We still have the difficult task of trying to
3 move towards final evidentiary hearing dates and we will set
4 those when we can.

5 But just like we did today, we set these dates
6 well in advance, with the full intention of trying to close
7 out this evidentiary hearing and documents were not ready,
8 things were submitted late, and we're waiting on a number of
9 other key documents to be completed.

10 I'd finally like to thank San Diego Gas and
11 Electric for providing us with this facility today,
12 extremely helpful to us, given the fact that the earthquake,
13 back on Easter Day here, apparently rendered the council
14 chambers or the board of supervisor's chambers not
15 available.

16 And I think we all appreciate the free electricity
17 that they also gave us today, as well.

18 Finally, thanks Commissioner -- I'm sorry, Hearing
19 Officer Renaud. I think you did an excellent job of hearing
20 management these last few days.

21 Commissioner Eggert, I appreciate your being here
22 as my Associate because there's some really difficult issues
23 to settle. Your assistance today and in deciphering and
24 applying what we've learned, it will be very much
25 appreciated and I'll certainly return the favor in July,

1 when I suspect we'll be back here again.

2 Thank you all very much, we're adjourned.

3 MS. FOLEY GANNON: Thank you.

4 (Thereupon, the hearing was adjourned

5 at 4:47 p.m.}

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